Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

ELLIOT S. SHAW,

Petitioner,

v.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz; ROBERT P. MARSCHALL and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator; and GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether evidence suggesting its bias against Petitioner was sufficient to require disqualification of the trial court.

II. Whether the trial court erred in invoking the *Rooker-Feldman* abstention doctrine and subsequently determining that Plaintiff had failed to state a cause of action.

III. Whether the sanctions imposed by the trial court impermissibly infringed upon Petitioner's First Amendment rights.

LIST OF PARTIES

Other than the parties stated in the caption, Barbara Norcross, Petitioner's client, was a named Plaintiff in the district court action. The trial court ruled that Norcross and Petitioner were jointly and severally liable for Defendants' attorneys fees and costs, and imposed an additional $25,000 penalty against Petitioner individually. As such, Norcross and all parties named in the caption of this matter remain financially interested in its outcome.

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Petitioner Elliot S. Shaw respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit in *Shaw v. Shivers*, No. 98-4776 (App. A), and the relevant orders of the district court in *Norcross v. Shivers*, No. 97-8554-CIV-RYSKAMP (App. B), are unreported.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on March 4, 1999.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, "Congress shall make no law . . . abridging . . . the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances."

The Fifth Amendment to the United States Constitution provides, in relevant part, "No person shall be . . . deprived of life, liberty or property without due process of law."

The Fourteenth Amendment to the United States Constitution provides, in relevant part,

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 144 provides, in relevant part, "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge . . . has a personal bias or prejudice . . . such judge shall proceed no further therein."

28 U.S.C. § 455(a) provides, in relevant part, "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

28 U.S.C. § 455(b) provides, in relevant part, "[A judge] shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party [.]"

42 U.S.C. § 1983 provides, in relevant part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law [.]

FRCP 8(a) provides, in relevant part,

> A pleading which sets forth a claim for relief . . . shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief [.]

STATEMENT OF THE CASE

The fundamental issue presented in this case is whether an attorney is entitled to relief from a judgment imposing Rule 11 sanctions based upon the dismissal of an allegedly frivolous action, when the district court demonstrated substantial bias towards the attorney, and improperly dismissed the lawsuit, thus abridging the client's constitutional right of access to the courts. To fully appreciate the circumstances that gave rise to this Petition, it is necessary to provide at least a condensed version of the factual background of this case

A. The background of the case. One would expect that the incident underlying the present matter would more likely be found among the pages of a Dashiell Hammett mystery than in a Petition for a Writ of Certiorari. On November 18, 1995, Palm Beach socialite and furniture heiress Mary Jacqueline "Jackie" Levitz disappeared from her newly purchased home in Vicksburg, Mississippi. Evidence at the scene, including a blood-soaked mattress, suggested that Levitz was the victim of an extremely violent attack, and likely could not have survived. Moreover, given that the attackers did not remove any of Levitz' valuables from the scene, suspicion arose that she had not merely been the victim of a violent robbery. Despite a reward offered by her family, Levitz never reappeared, nor has her body been located. Shortly after the disappearance, Respondent Elliot S. Shaw (hereinafter "Shaw") was

approached by Barbara Norcross, a psychic who had allegedly been a close friend of Levitz, who sought his assistance in obtaining information regarding her disappearance. At the time of their meeting, Shaw had practiced law for nearly twenty-six years with an unblemished reputation, and was board certified by The Florida Bar as a trust and estate lawyer. Norcross expressed her belief that Levitz was dead and that Levitz' relatives were directly or indirectly involved with the murder disappearance, and requested his help to prevent those guilty from despoiling the Levitz estate.

In order to determine whether an evidentiary basis for an action existed, Shaw and Norcross traveled to Vicksburg and interviewed numerous witnesses, examined volumes of records, and obtained substantial evidence which suggested that Levitz was the victim of a pre-planned murder scheme. But Shaw and Norcross were not alone in believing that Levitz had met with foul play — even Levitz' own sister recalled that Levitz had expressed fears about her well-being immediately prior to her disappearance. Both Shaw and Norcross made appearances in the media, where they spoke of their concerns. Unfortunately, both Shaw and Norcross were repeatedly rebuffed by state and federal law enforcement officials, and no action was taken to investigate their allegations.

B. The state action. On November 8, 1996, based upon the evidence accumulated in his investigation, Shaw filed a Verified Petition for Appointment of Curator and Notice of Suspicion of Murder in the Probate Division of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (App. C). The Petition requested that the Court appoint a curator for Levitz' estate, and made clear that neither Shaw nor Norcross had any interest in Levitz' assets or in administering the estate themselves, but merely wanted to see justice done for Levitz:

> The Petitioner [Norcross] has no interest in gaining custody or control or management authority over Jacqueline Levitz' assets or properties and is strictly dedicated to bringing Jackie's murderers to justice as an interested person.

(App. C, p. 18a). The Petition further requested that the Court appoint Levitz' son, a Maryland resident, and a local fiduciary to act as co-curators of the estate, but at no time whatsoever did it request that either Shaw or Norcross be appointed in this capacity. (App. C, pp. 17a-18a).

After the action was consolidated with an existing conservatorship[1], reaction was swift. Almost immediately, attorneys for Tiki Shivers, Levitz' sister and the appointed conservator, moved to dismiss the petition on the ground that Norcross had no right to seek appointment as a curator, despite the fact that Norcross clearly never intended to do so. Shivers repeatedly blocked Norcross' requests for discovery, refusing to disclose even the barest of documentary information about the case. Throughout the proceedings, Norcross made clear that her only purpose was to determine whether Levitz had been murdered, and implored the court to merely review the records and prove her wrong[2].

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1. At the time the Petition was filed, Shaw was unaware that the Circuit Court had already appointed Levitz' sister as the *conservator* of the estate. Under Florida law, a conservator is appointed when an individual is absent from the jurisdiction, while a curator is appointed for an individual who died intestate. *See* Fla. Stat. § 733.501, *et seq.*

2. Norcross was not the only party seeking to determine Levitz' fate. Subsequent to the filing of Norcross' petition, the bank overseeing a trust fund established by Levitz' late husband (Cont'd)

Shivers' obstructionist tactics ultimately bore fruit. On January 10, 1997, the probate court entered an order dismissing Norcross' petition with prejudice. Incredibly, the order alleged that Norcross had requested that the court appoint *her* as curator of Levitz' estate, even though she had never requested such an appointment. The language of the order clearly suggests that the court had either never read the petition at all and/or was incapable of understanding the claims made within it:

> She [Norcross] is not an interested person by any legal interpretation and she frankly has no more business asserting a claim to become the curator of this estate than would any other non-interested party who walked in off the street and made the representations and allegations that she has made . . . she has no authority or right to be interfering in the probate process and her request to get involved in the family's finances are better left to police authorities. *There is simply no merit to the petition of Barbara Norcross.*

(App. D, p. 21a) (emphasis added). Subsequently, a successor judge assessed sanctions against Shaw and Norcross under Fla. Stat. § 57.105 without affording them a hearing, thus violating their due process rights.

C. The federal action. On July 14, 1997, Norcross filed a multiple-count federal action against Shivers, her

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(Cont'd)

petitioned the probate court to declare Levitz dead. Shivers fought the bank's attempt to intervene, insisting that Levitz was still alive. *See Levitz Case Takes New Turn*, *The Miami Herald*, April 16, 1997, at 2B.

attorneys, and the probate judges who had handled the conservatorship proceedings, alleging, *inter alia*, that these parties had conspired to deprive her of her constitutional rights in violation of 42 U.S.C. §§ 1983, 1985 and 1986. In sum, Norcross argued that the Defendants had discriminated against her and denied her constitutional right to access the courts by blocking her efforts to bring facts regarding the Levitz murder to light.

The case was ultimately assigned to District Court Judge Kenneth Ryskamp, which immediately gave Shaw cause for alarm. In 1991, Judge Ryskamp's nomination to the United States Court of Appeals for the Eleventh Circuit was rejected by the Senate after it was determined that he had belonged to a racially and religiously restrictive social club, and had previously espoused biased viewpoints towards African-Americans and other minorities. Moreover, Judge Ryskamp had acquired a reputation within the Southern District of Florida for summarily dismissing civil rights cases without affording litigants the right to a jury trial[3]. In a previous civil rights case before Judge Ryskamp, Shaw had found him to be biased against his client, and had filed a motion to recuse, which was denied.

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3. Judge Ryskamp's decisions regarding civil rights matters were repeatedly overturned on appeal. *See, e.g., Brown v. City of Fort Lauderdale*, 923 F.2d 1474 (11th Cir. 1991) (overturning judgment on the pleadings and ordering a jury trial); *Zakalma v. Mt. Sinai Medical Center*, 842 F.2d 291 (11th Cir. 1988) (overturning dismissal of civil rights case); *Meek v. Metropolitan Dade County, Florida*, 805 F. Supp. 967 (S.D. Fla. 1992) (successor judge ruled that Ryskamp's dismissal of Voting Rights Act litigation brought by black and Hispanic plaintiffs was legal error).

On October 23, 1997, Shaw filed a Motion to Recuse (App. F), arguing, *inter alia,* that Judge Ryskamp was unfit to adjudicate a civil rights case, or any other case for that matter, and in any event had previously demonstrated such bias towards Shaw and his clients that Norcross could not expect to receive a fair hearing on her complaint. Attached to the Motion were a series of documents which demonstrated that Judge Ryskamp had not only consistently denied civil rights claimants their constitutional right to a jury trial, but also indicated that Judge Ryskamp had engaged in activities which called his ethics into question[4].

As Shaw had feared, the Court denied the Motion to Recuse. Although the order initially asserted that the Motion to Recuse was legally insufficient pursuant to 28 U.S.C. § 144, the language made clear that Judge Ryskamp had considered other issues in arriving at his decision. Using a derisive tone, the order criticized Shaw and his allegedly improper motives for seeking to recuse Judge Ryskamp, and even went so far as to take issue with the factual allegations of unethical behavior on Ryskamp's part. Read as a whole, the Order clearly demonstrates that Judge Ryskamp had created a conflict between himself and Shaw that colored his ability to impartially judge the issues before

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4. These items, which have been omitted from this Petition for reasons of brevity, included a report demonstrating that Judge Ryskamp had continued to operate as an officer of his former law firm, even using his courthouse address; moreover, there were documents which suggested that Judge Ryskamp was attempting to evade income taxes on certain investments. Much of this information had previously been brought before the United States Court of Appeals for the Eleventh Circuit in another case involving Judge Ryskamp's dismissal of a civil rights action brought by a Shaw client. *Fetterly v. Palm Beach County*, No. 97-4281.

him[5]. Moreover, the Court's order that the documents supporting the Motion to Recuse *be removed from the public record and sealed* clearly demonstrates that Judge Ryskamp somehow felt threatened by the information presented in them.

Such bias was clearly behind the next order issued in the case. On the same day that Judge Ryskamp issued his order denying the Motion to Recuse, he entered an order dismissing the case with prejudice. Although the main thrust of the order was that the court could not consider Norcross' claims under the *Rooker-Feldman* abstention doctrine, Judge Ryskamp nonetheless dealt with the merits as well, in what appeared to be a clear effort to set up Shaw and Norcross for sanctions. Even after ruling that he had no jurisdiction to consider the claims at all, Judge Ryskamp nonetheless found that the claim failed to meet the minimum pleading requirements of FRCP 8(a) and failed to state a cause of action under 42 U.S.C. § 1983 and its progeny. Once again, the order derided Norcross and Shaw, as well as their alleged motives in bringing the action.

In the final judgment, which incorporated the above two orders by reference, the court specifically reserved jurisdiction to *impose* sanctions under Rule 11, indicating that it had prejudged the issue without giving Shaw and Norcross an adequate opportunity to be heard. In keeping

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5. The language of the Order was not the only indication that Judge Ryskamp was biased against Shaw and his clients, however. In an interview conducted after to the issuance of the orders under review, Judge Ryskamp stated that he had been extremely offended by allegations made in the Motion to Recuse. *See* Sabrina L. Miller, *Decisions in Civil Rights Cases Dog Federal Judge, The Miami Herald*, May 6, 1999, at 1A.

with his predisposition towards sanctions, Judge Ryskamp entered an Order on ruling that the Complaint was legally frivolous, and granted Defendants' Motion for Rule 11 Sanctions. On March 5, 1998, the Court held a hearing for the sole purpose of determining the amount of sanctions to be imposed, and subsequently entered an order imposing sanctions totaling $50,000 against Shaw.

On May 5, 1998, Shaw appealed the imposition of sanctions to the United States Court of Appeals for the Eleventh Circuit. On March 4, 1999, in an unpublished order, the Eleventh Circuit found no error upon consideration of the record. This Petition follows.

REASONS FOR GRANTING THE WRIT

THE PETITION SHOULD BE GRANTED BECAUSE THE ORDERS UNDER REVIEW ARE IN CONFLICT WITH BOTH STATUTORY MANDATES AND THIS COURT'S JURISPRUDENCE.

In derogation of statutory authority, Judge Ryskamp improperly refused to recuse himself from this matter, and then subsequently dismissed the petition and sanctioned Petitioner. Such excesses pose a substantial threat to the integrity of the judiciary, and should not be countenanced by this Court.

I.

THE TRIAL COURT DEMONSTRATED BLATANT BIAS AGAINST PETITIONER, AND ITS FAILURE TO RECUSE ITSELF CONSTITUTED ERROR.

This Court has recognized that the right to be heard by a fair and impartial arbiter is one of the essential elements necessary for an effective judiciary. *See, e.g., Liteky v. United States*, 510 U.S. 540 (1994). Pursuant to 28 U.S.C. § 455(a), a judge is mandated to recuse himself in any situation where a reasonable, objective individual may feel there is a possibility of bias. Moreover, 28 U.S.C. § 455(b) requires disqualification where the judge harbors any personal bias against a litigant. Finally, pursuant to 28 U.S.C. § 144, a Court is prohibited from taken further action upon presentation of an affidavit setting forth legally sufficient grounds for disqualification, and is required to transfer the matter to another judge for resolution. The purpose of these statutes is to "promote confidence in the judiciary by avoiding the appearance of impropriety whenever possible." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1988). Thus, in passing on a motion seeking recusal, a judge must resolve all doubts regarding the appearance of bias in favor of disqualification. *Liljeberg*, 486 U.S. at 860-62. In addition, review of such motions must be limited to a determination of whether the allegations, if true, would be legally sufficient to compel disqualification, and the judge should not pass on the factual merits of the allegations, even if he knows them to be false. *Berger v. United States*, 255 U.S. 22, 36 (1921).

Judge Ryskamp's Order Denying the Motion to Recuse initially asserts that the Motion was legally insufficient pursuant to 28 U.S.C. § 144, but then goes far beyond the bounds of acceptable review to attack the merits of the factual allegations and the motives of its author. In the Order, Shaw is accused of hostility towards the Court, and is alleged to be pursuing a vendetta against the Court as a result of its prior rulings. (App. G, p. 51a). Shaw's allegations of bias are dismissed as "ludicrous" and "false." (App. G, p. 52a). The Order goes so far as to rule on the merits of allegations of misconduct leveled against the judge, calling them "unfounded." (App. G, p. 52a). The Order concludes with a finding that the Motion to Recuse was nothing more than a "ploy" intended to aid Shaw in obtaining a judge of his choosing, which the court intended to defeat. (App. G, pp. 53a-54a) . In the subsequent order dismissing the suit, Judge Ryskamp referred to the allegations contained within the Complaint as "outlandish" and "baseless," (App. H, p. 70a), and asserts that anyone who disagrees with the allegations is believed by Norcross to be part of a conspiracy against her. (App. H, p. 60a).

By ruling on the merits of the allegations contained in the Motion to Recuse, Judge Ryskamp created an adversarial relationship between himself between himself and Shaw, with the result that his ability to impartially judge the matters before him was substantially prejudiced, if not completely destroyed.[6] A review of Judge Ryskamp's

6. Under Florida law, a judge must confine himself to determining whether a Motion to Recuse is legally sufficient; if the judge takes issue with the merits of the supporting allegations in any way, he creates a "intolerable adversary relationship" between himself and the moving litigant that in itself mandates (Cont'd)

opinions regarding Shaw expressed both in and out of the courtroom suggest that there is *substantial* doubt as to whether Judge Ryskamp was entirely impartial, and the substantial monetary sanctions levied against Shaw only serve to underscore this concern. Given the facts of this case, it strains credulity to suggest that a reasonable, objective observer would not have detected the appearance of bias. The plain language of 28 U.S.C. § 455(a) thus mandated that Judge Ryskamp recuse himself from further consideration of this matter, and his failure to do so resulted in substantial and prejudicial error.

II.

THE COURT ERRED IN DISMISSING THE COMPLAINT ON PROCEDURAL GROUNDS.

A. *Rooker-Feldman.* The *Rooker-Feldman*[7] abstention doctrine holds that a district court may not review the final judgments of a state court or any claims that were not raised in the state court but would require the court to determine that the state court wrongly decided the issues before it. Before the doctrine may be invoked, however, two prerequisites must be satisfied: first, the party against whom the doctrine is sought to be invoked must have been a party

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(Cont'd)

disqualification, even if the motion would have otherwise been legally insufficient. *See Mackenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332 (Fla. 1990); *Bundy v. Rudd*, 366 So. 2d 440 (Fla. 1978). We urge the Court to adopt a similar bright-line rule for federal judges.

7. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

to the prior state litigation, and second, the party must have had an adequate opportunity to raise his federal claim in the state court. *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 470 (1983).

In the matter under review, Judge Ryskamp ruled that Plaintiff's civil rights claims were "intrexicably intertwined" with issues raised in the state litigation, and were thus barred by *Rooker-Feldman*. His analysis of the doctrine was fatally flawed in several respects. Most significantly, the two prerequisites set forth above were not met: with the exception of Tiki Shivers, none of the named defendants in the federal litigation were parties in the state litigation, and it would be absurd indeed to assert that Norcross could have brought a civil rights action in a probate court where the sitting judge was named as a defendant.

Surprisingly, the dismissal order concedes the flaws in Judge Ryskamp's analysis. First, the Court candidly admitted that the doctrine could not be invoked if this Court's holding in *Johnson* was strictly applied. To justify his departure from established precedent, Judge Ryskamp cited several of *his* prior rulings[8], as well as an unpublished case from the Eleventh Circuit, to support his *belief* that *Rooker-Feldman* would nonetheless apply to the matter at hand. It is axiomatic that a district court is strictly bound by the mandates of this Court, and cannot choose to depart from them simply because it believes that they should not apply to a given circumstance. As such, Judge Ryskamp's ruling clearly constituted error.

8. One of the decisions cited involved the dismissal of a case where Shaw also represented the plaintiff, and Judge Ryskamp took great pains to assert that Shaw was allegedly trying to revive the same failed tactics that he used in the prior case.

Judge Ryskamp also erred by considering the merits of Norcross' Complaint as a relevant factor in his *Rooker-Feldman* analysis. Although he again conceded that Norcross could not have brought her constitutional claims in the state court, he ruled that the claims were baseless, and thus could not prevent the application of *Rooker-Feldman*. If a court determines that *Rooker-Feldman* applies to a given action, however, then it lacks subject-matter jurisdiction to consider the claims at all, and thus it has no authority to rule on the merits of the case. *See Powell v. Powell*, 80 F.3d 464, 465, 467-68 (11th Cir. 1996). Not only did Judge Ryskamp consider the merits of Norcross' claims as relevant to the *Rooker-Feldman* analysis, but he also went further and analyzed the merits of the due process and equal protection claims. By ruling that *Rooker-Feldman* applied, however, Judge Ryskamp did not have jurisdiction to do this, and once again his actions in this regard constitute error.

B. Sufficiency of the Civil Rights Claims under FRCP 8(a)(2).

Pursuant to FRCP 8(a)(2), a complaint need only contain a short and plain statement of the claim showing that the pleader is entitled to relief to survive a motion to dismiss, and a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could not prove a single fact in support of his claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Furthermore, even if the allegations do not support the particular theory advanced, a motion to dismiss should not be granted unless the allegations would not entitle the pleader to relief under any legal theory. *Bowers v. Hardwick*, 478 U.S. 186, 203 (1986) (Blackmun, J., dissenting) (quoting *Bramlet v.*

Wilson, 495 F.2d 714, 716 (8th Cir. 1974)). Professor Wright has stated that a court must be especially reluctant to dismiss novel and extreme claims on the basis of the pleadings alone, as it is important that new legal theories be explored on the basis of the actual facts rather than the pleaders suppositions. 5A Wright & Miller, *Federal Practice and Procedure* § 1357, pp. 341-43 (1990).

In a civil rights claim, a claim for relief is sufficient to state a cause of action if it alleges that the Defendants acted under color of state law to deprive the plaintiff of federally protected rights. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). More recently, this Court has rejected attempts by lower courts to impose stricter pleading requirements on civil rights claims, holding that plaintiffs need only comply with the minimum standards of FRCP 8(a)(2) to state a cause of action. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993).

In the present matter, the Complaint repeatedly asserted that the actions of the defendants, who were acting under color of law in judicial proceedings, deprived Plaintiff of the procedural due process guaranteed by the Fifth and Fourteenth Amendments, as well as her right of access to the courts, which has been long recognized as a fundamental constitutional right. *Lewis v. Casey*, 518 U.S. 343, 350 (1995). At the initial pleading stage, this was enough to state a cause of action pursuant to FRCP 8(a)(2). In dismissing the complaint, however, Judge Ryskamp went beyond the four corners of the complaint and attempted to rule on the merits of the claims. Such review was cursory at best, and made no attempt to determine whether the allegations could constitute a cause of action under any theory of law. It appears that Judge Ryskamp may have

confused abstention under *Rooker-Feldman* to necessitate a finding that the allegations made were insufficient to state a cause of action. This error was subsequently compounded by the court's "bootstrapping" of its ruling into a later determination that the complaint was legally frivolous. As the Complaint clearly stated a cause of action from the outset, however, all such determinations to the contrary constituted error.

III.

THE TRIAL COURT'S SANCTIONS IMPROPERLY CONTRAVENE THE FIRST AMENDMENT RIGHT OF EXPRESSION NECESSARY FOR THE COMMISSION OF JUSTICE.

Throughout the tortuous litigation of this matter, one important fact has been largely ignored. In bringing this action, Shaw sought merely to bring the killers of an innocent woman to justice. He received no compensation for his work, and has in fact sacrificed of himself to move this litigation forward. His allegations of misconduct on the part of the various actors in this drama were based upon a good-faith belief that justice had not been done rather than any personal consideration.

Although the practice of law is a privilege burdened with conditions, an attorney does not leave his First Amendment right of free expression at the courthouse door. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051 (1991). In bringing this action, Shaw sought to alert the court that the defendants might have abused their official power, a situation that Justice Brennan noted "goes to the very core of matters of public concern." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 606 (1976) (Brennan, J., concurring.) Judge Ryskamp's decision to summarily deny Shaw the right to be heard and to punish

him for seeking to expose official misconduct serves only to chill the devotion towards justice that we should expect from officers of the court.

CONCLUSION

The actions of Judge Ryskamp in this matter resulted in substantial and prejudicial injury to Petitioner, and directly contravene the impartiality and integrity expected of those on the bench. By granting a writ of certiorari, however, this Court can both repair the damage done in the matter before it and set the standards necessary to prevent such judicial misconduct in the future.

Accordingly, Petitioner Elliot S. Shaw respectfully requests that his petition for a writ of certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED MARCH 4, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4776
Non-Argument Calendar

D.C. Docket No. 97-CV-8554-KLR

BARBARA NORCROSS

Plaintiff,

ELLIOT STANLEY SHAW

Appellant,

Versus

TIKI SHIVERS, individually and as conservator for Mary Jacqueline Levitz; ROBERT P. MARSCHALL, individually and as attorney for Tiki Shivers, et al.,

Defendants-Appellees,

Appeal from the United States District Court
for the Southern District of Florida

(March 4, 1999)

Appendix A

Before HATCHETT, Chief Judge, BLACK and BARKETT, Circuit Judges.

PER CURIAM:

Appellants appeal from the dismissal of the complaint in this case and from the imposition of Rule 11 sanctions against Elliot S. Shaw. Having reviewed this record we conclude that the district court did not err in dismissing the complaint or in imposing Rule 11 sanctions.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA IMPOSING RULE 11 SANCTIONS DATED AND FILED APRIL 13, 1998

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8554-CIV-RYSKAMP

BARBARA NORCROSS,

Plaintiff,

vs.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz, ROBERT P. MARSCHALL, and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator, GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Defendants.

ORDER IMPOSING RULE 11 SANCTIONS

THIS CAUSE came before the Court upon defendants' motions for attorneys' fees and costs and upon this Court's Order Granting Rule 11 Sanctions, entered February 4, 1998.

While defendants have moved for attorneys fees pursuant to both 28 U.S.C. § 1988 and Rule 11, the Court shall impose attorneys' fees and costs against plaintiff Ms.

Barbara Norcross and her former attorney Mr. Elliot Shaw jointly and severally pursuant to Rule 11(c).[1] Also, the Court shall impose a monetary penalty against Mr. Shaw in the amount of $25,000.00.

I. LEGAL STANDARD

Rule 11 grants courts the power to sanction litigants and attorneys who make assertions without proper evidentiary and/or legal support. Sanctions may be appropriate where a claim is "presented for any improper purpose, such as to harass," including any claim based on "allegations and other factual contentions [lacking] evidentiary support" or unlikely to prove well-grounded after reasonable investigation. Rules 11(b)(1), (3). The imposition of sanctions pursuant to Rule 11 is meant to deter plaintiffs and attorneys from violating this rule. *See* Rule 11, 1993 Amendment Advisory Committee Notes, Subdivision (b) & (c); *Donaldson v. Clark*, 819 F.2d 1153, 1556-57 (11th Cir. 1987) (the word 'sanctions' in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions, or other papers).

District courts can sanction litigants and/or attorneys under Fed.R.Civ.P. 11(c), *see Battles v. City of Fort Myers*,

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1. Mr. Shaw contends that defendants have not "prevailed" for purposes of the statute and may not recover attorneys' fees under § 1988 because this case was dismissed pursuant to the *Rooker-Feldman* abstention doctrine. This Court will not address this argument as attorneys' fees and sanctions are clearly warranted under Rule 11.

127 F.3d 1298, 1300 (11th Cir.1997), giving courts discretion to fashion sanctions to fit the particular case.

> If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Fed.R.Civ.P. 11(c). The discretion vested in the court is reinforced by the Advisory Committee Notes: "[t]he court . . . retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted."

Although the sanctions most commonly imposed are costs and attorneys' fees, the selection of the type of sanction to be imposed lies within the district court's sound exercise of discretion. *Id.* Courts may sanction using various means, including by awarding attorneys' fees and costs to a movant and by imposing a monetary penalty on the offending party:

> the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

Fed. R. Civ. P. 11 (c)(2). Sanctions may be set at a level "sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." *Id.*; *Clinton v. Jones*, __ U.S. __, 117 S.Ct. 1636, 1652, n.42 (1997).

II. DISCUSSION

When confronted by a motion for Rule 11 sanctions the Court must determine if the claims are objectively frivolous and if so, whether the person who signed the pleadings should have been aware that they were frivolous. *Jones v. International Riding Helmets, Ltd.*, 43 F.3d 692, 695 (11th Cir.1995). Also, Rule 11(c) and due process require that notice and a reasonable opportunity to respond be given those to be sanctioned.

In the instant case, this Court ruled that Rule 11 sanctions were appropriate because Plaintiff's Complaint (1) was frivolous and its claims "unwarranted and futile," and (2) was filed "to satisfy personal animus and to harass and impugn the defendants." Order Granting Defendants' Motions For Rule 11 Sanctions at 11, 16. It is clear that both plaintiff and her attorney knew the contents of the Complaint. This Court's hearing regarding sanctions, established that Mr. Shaw authored the Complaint, and after reading it, plaintiff signed it under penalty of perjury. Accordingly, both plaintiff and Mr. Shaw had knowledge of and are responsible for the Complaint's frivolous allegations.[2]

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2. The frivolous allegations of the Complaint are detailed and described in this Court's prior orders — Order Granting Dismissal and Order Granting Sanctions.

(Cont'd)

Appendix B

Attorneys and clients facing possible discipline under Rule 11 have interests qualifying for protection under the Due Process Clause of the Fifth Amendment. Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest. *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). Due process and Rule 11(c) require that the attorney (or party where applicable) has fair notice of the possible imposition sanctions and of the reasons for their imposition. *Donaldson v. Clark*, 819 at 1559-60. In the instant case, both plaintiff and Mr. Shaw were given adequate notice and opportunity to respond to two separate motions for Rule 11 sanctions, filed October 3, 1997 and November 25, 1997. Plaintiff, by Mr. Shaw, responded in opposition to both of the motions, filed October 9, 1997 and December 8, 1997. As to Mr. Shaw, the existence of Rule 11 itself also constitutes a form of

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(Cont'd)

The extent of plaintiff's knowledge of the proceedings in this case is unclear. In a letter to this Court dated December 29, 1997, plaintiff writes that Mr. Shaw "seldom made me aware of his strategies in this case." She accuses Mr. Shaw of manipulating her words. In another similar letter to the Florida Bar Ms. Norcross claims to have been "used and mislead." And, that her intentions in bringing legal action have been "drastically thrown off course" due to actions taken by Mr. Shaw. Letter to the Florida Bar, dated December 29, 1997, Exhibit "13" of Defendants' Motion to Disqualify Elliot S. Shaw. In the hearing before this Court, Mr. Shaw's secretary Laura Ahlers told a different story. She claimed that Ms. Norcross was kept abreast of all matters in the case, and that the first time Mr. Shaw's office became aware of her discontent was after the case had been dismissed, and Ms. Norcross had written the above-referenced letters.

notice since the rule imposes an affirmative duty on an attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed; an attorney could not assert that he or she had no notice or knowledge of the standards of conduct that the rule itself provides. *Donaldson*, 819 F.2d at 1560.

Since the Complaint had no basis in law or fact and was dismissed because there existed no legitimate claim for relief, there are sufficient grounds to impose Rule 11 sanctions. *See McGregor v. Board of Commissioners of Palm Beach Co.*, 956 F.2d 1017 (11th Cir.1992). Both plaintiff and Mr. Shaw were aware of the frivolous allegations of the Complaint and were provided notice and an opportunity to respond to defendants' motions for Rule 11 sanctions. Accordingly, sanctions will be imposed.

A. Attorneys Fees and Costs

In a case factually similar to this one, a court imposed Rule 11 sanctions where a party filed numerous motions "containing endless inane assertions that defendants and their attorneys conspired with the trial judge in hiding the true facts of his case." *Edwards v. Groner*, 124 F.R.D. 605, 608 (D.V.I.1989). The court found that such conduct constituted a violation of Rule 11, and that an award of costs, expenses and attorneys fee's attributable to the Rule 11 violation was appropriate. *Id.* at 610. Likewise in this case, the Court finds an award of attorneys' fees and costs against both plaintiff and Mr. Shaw to be an appropriate sanction.

Appendix B

The Court held a hearing on March 12, 1998 in order to determine the appropriateness of claimed attorneys' fees and to determine against whom the fees would be imposed. The Court heard testimony from two expert witnesses, attorneys who regularly practice in relevant areas of law, who confirmed the reasonableness of defendants' attorneys' fees. The Court has reviewed the fees and costs claimed by defendants' counsel and concludes that they are reasonable and appropriate in light of the factors established in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). It shall tax fees and costs in the amount of $16,000.00 to defendants, Tiki Shivers, Andrew Ostrow, and Robert Marschall, and in the amount of $9218.75 to defendants, Judges Gary L. Vonhof and John J. Hoy. This total fee award of $25,218.75 shall be taxed against plaintiff and Mr. Shaw jointly and severally.

B. Monetary Penalty

Over and above the attorneys' fees and costs awarded above, this Court shall impose monetary penalty pursuant to Rule 11(c)(2) against Mr. Shaw in the amount of $25,000.00. In its Order granting Rule 11 sanctions, this Court found plaintiff's Complaint to have been filed for an improper purpose, "namely, to harass and disparage the defendants." Order Granting Sanctions at 13. At the hearing, this Court concluded that Mr. Shaw's culpability was far greater than that of the plaintiff. Mr. Shaw had or should have had professional knowledge and understanding of the frivolous legal arguments made in the Complaint. Also, various pleadings drafted by Mr. Shaw evidenced a personal vendetta against the defendants and this Court, that did not

relate to plaintiff or her Complaint. *See* Order Granting Rule 11 Sanctions, entered February 4, 1998. Mr. Shaw's actions demonstrated an ignorance and contempt for standards of legal ethics. *Id.*

It is within this Court's discretion to impose Rule 11 sanctions above and beyond defendants' attorneys' fees and costs against plaintiff's former counsel Mr. Shaw. Fed. R. Civ. P. 11(b) and (c). In *Mike Ousley Productions, Inc. v. WJBF-TV*, 952 F.2d 380 (11th Cir.1992), this Circuit ruled that imposition of Rule 11 sanctions against a plaintiff's attorney and not plaintiff was within the trial court's discretion. *See also Kleiner v. First National Bank of Atlanta*, 751 F.2d, 1193, 1209-10 (11th Cir.1985) (upholding a $50,000 fine against counsel for intentional misconduct imposed by district court under its inherent power to sanction attorneys practicing before it). Because of the seriousness of the unsupported allegations of judicial impropriety, as well as the injury to the administration of justice and federal-state judicial comity that such allegations have caused, this court finds that a sanction solely against Mr. Shaw pursuant to Rule 11(c) is necessary both to punish his conduct and to deter such abuse from being repeated in the future. Accordingly, Mr. Shaw, in his individual capacity, shall pay to the Clerk of this Court a penalty in the amount of $25,000.00.

III. CONCLUSION

The Court has considered the Motions and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

Appendix B

ORDERED AND ADJUDGED that defendants' motions for attorneys' fees **[DE's 44 & 48]** be, and the same are hereby **GRANTED.** The following amounts shall be taxed pursuant to this Court's imposition of Rule 11 sanctions against plaintiff and plaintiff's former counsel:

1. Ms. Barbara Norcross and Mr. Elliot S. Shaw are hereby taxed jointly and severally a total of $25,218.75 in defendants' attorneys' fees and costs, $16,000.00 to defendants, Tiki Shivers, Andrew Ostrow, and Robert Marschall, and $9218.75 to defendants, Judges Gary L. Vonhof and John J. Hoy. Let execution issue forthwith.

2. Mr. Elliot Shaw shall hereby pay a penalty within twenty (20) days of this Order to the Clerk of this Court in the amount of $25,000.00.

Pursuant to Rule III of the Rules of Attorney Discipline, this matter is hereby referred to the Grievance Committee of the Southern District of Florida for the investigation and review of misconduct by Mr. Elliot S. Shaw as described in this and prior orders in this case.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 13 day of April, 1998.

s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

APPENDIX C — VERIFIED PETITION FOR APPOINTMENT OF CURATOR AND NOTICE OF SUSPICION OF MURDER DATED AND FILED NOVEMBER 8, 1996

IN THE CIRCUIT COURT, IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION
Case No.: CP 96-H586-IB
CP 96-2042-IB

IN RE: THE CURATORSHIP OF THE ASSETS OF JACQUELINE LEVITZ, a missing person.

VERIFIED PETITION FOR APPOINTMENT OF CURATOR AND NOTICE OF SUSPICION OF MURDER

The Petitioner, BARBARA NORCROSS, sui juris, currently residing at 218 Pershing Way, West Palm Beach, FL 33405, hereby petitions this Honorable Circuit Court, Probate Division, for the appointment of a Curator, pursuant to §733.501, Fla. Stat. of the unattended to estate of the Palm Beach resident and socialite Jacqueline Levitz, a Palm Beach County resident who was reported missing as of November 20, 1995 (*see* Exhibit "A" annexed hereto), and as grounds therefore states as follows:

1. The Petitioner, BARBARA NORCROSS, is an interested person as a technical creditor of the estate of Jacqueline Levitz, but also most importantly, the closest, most intimate friend of Jacqueline Levitz for the last six years of Jackie's life. During those six years, Jacqueline Levitz regularly met and consulted with the Petitioner for

spiritual and emotional support and guidance both as to personal and family matters in the Petitioner's capacity as a professional psychic (*see* Exhibit "B" annexed hereto), as well as friend, but over time, Jackie even came to confide in the Petitioner also about financial matters.

2. Within just three weeks of getting away from Palm Beach to be near her roots in Northeast Louisiana and of purchasing a home at 15 Riverwood Circle in the legendary Civil War City of Vicksburg, Mississippi, overlooking the river, this beautiful blond and the widow of the furniture store magnate, Ralph Levitz, was abducted from her house under brutal, blood curdling, and terrifying circumstances. Still very well built, strong and healthy, the beauteous 62 year old butterfly, Jacqueline, had managed to escape her farm background to accede to fortune and admirable social fame. However, while undiscussed, Jackie left behind some smoldering antagonism amongst siblings as part of the price of her successful climbing of the upscale ladder.

3. Although detached from her Louisiana roots, Jacqueline nonetheless never relinquished her spiritual faith and belief in the occult and metaphysical. In fact, Jacqueline maintained an inherent skepticism of, and instinctive mistrust for lawyers, brokers and other conventional advisors.

4. However, one quote in The Vicksburg Post of a local friend (*see* Exhibit "A") is extremely telling as to why the Petitioner is convinced that Jacqueline Levitz was abducted and murdered: "Jackie has a very generous nature. She is a very caring person. She would have given anything to anybody."

5. After the death of her husband, Ralph Levitz months earlier in 1995, her financial status became far more uncertain, forcing her to more closely inspect, examine and question her own investments and previously generous loans, including those with family members.

6. Jackie had transferred very little furniture to her new Vicksburg home from her two Palm Beach Towers Condominium Apartments, and from her house at 127 Coconut Row, and had left most of her wardrobe and almost all of her personal belongings behind in Palm Beach, Florida. In fact, the statement by the former Warren County, Mississippi Sheriff, Paul Barrett (*see* Exhibit "A"), that "two purses were also missing" is startling, unless of course, the murderers had been spoken to. Nobody could possibly have known how many purses Jacqueline brought with her from Palm Beach or how many purses were with her at the time of abduction. But fenceable furs and diamond jewelry clearly takeable were left behind.

7. Furthermore, based upon information given by Jacqueline Levitz to the Petitioner, Jacqueline's banking business was at all times maintained and conducted at Barnett Bank in Palm Beach, and upon information and belief, other brokerage and investment accounts were likewise mostly maintained in the South Florida area. Jacqueline maintained her Florida driver's license, her Florida voter's registration, and almost all her social and charitable activities were conducted in Palm Beach. Jacqueline Levitz by all evidence remained a Palm Beach County resident at the time of her disappearance.

Appendix C

As of this date, almost one year after Jacqueline's terrifying and violent disappearance, *no known formal court proceeding has yet been opened either in Mississippi or Florida*, seeking either to conserve, preserve or take charge of the assets of Jacqueline Levitz until such time as she is presumed or determined to be dead (after five years in accord with §731.103(3), Fla. Stat.). While the Petitioner is very confident that the failure to open a curatorship is squarely balanced on some one in Jacqueline's family not wanting disclosure of Jackie's remaining assets and her previous asset transfers, the Petitioner knows that the assets of Jacqueline Levitz and transfers thereof will lead a direct path to the murderers. Additionally, and independently, it is necessary that the unattended to assets must be properly handled and managed until such time as lawful distribution can be made.

9. Furthermore, out of the necessity of preserving and caretaking for Jacqueline Levitz' assets, and in order to capture her murderers, it is essential that a Curator be appointed to preserve the assets of Jacqueline Levitz with full authorization by this Court for the Curator to perform any function or duty of a Personal Representative pursuant to §733.501(3), Fla. Stat. until Jacqueline Levitz' death becomes legally presumed except as to those restrictions on sale of assets which this Honorable Court deemed appropriate. It is the strong conclusion of the Petitioner and her counsel, based on a trip to Vicksburg, Mississippi to meet with law enforcement authorities (*see* collective Exhibit "C") and based on close evaluation of other information obtained directly and intuitively, and statements by family members, that the key question to ask is not what

one might get from Jackie, but who gained from having her taken out of the way.

10. Despite continued public and private pressure by the Petitioner (*see* Exhibit "D" annexed hereto), law enforcement officials in Mississippi and the FBI have, from all appearances, failed to do even routine investigation and interrogation of the family and Jacqueline's assets and asset transfers (*see* Exhibit "E" annexed hereto). A local Vicksburg lady even offered words of warning to Barbara Norcross of opening "Pandora's box" and the misdeeds and alliances of Sheriff Paul Barrett, *see* Exhibit "F" annexed hereto. Current Sheriff Martin Pace has to this day never communicated or corresponded with the Petitioner or anyone else to Petitioner's knowledge on the Jacqueline Levitz investigation or even given status of the case to the media.

11. In addition to the possibility of an inter-sibling murder, the Court should also be advised that this matter may very well involve serious questions about the nature and methods of the newly emerging Mississippi River boat gambling industry's debt collection practices. The Petitioner suspects that this may be one of the primary reasons why this murder has not yet been solved, and why law enforcement officials have seemed so reluctant to investigate and interrogate.

12. Upon information and belief, the Petitioner believes that Walter Bolton III residing at 6104 Kirby Road, Clinton, MD 20735 is the only child and lineal descendent of Jacqueline Levitz, and therefore is the sole intestate heir of

Jacqueline Levitz. Furthermore, upon information and belief, if there is a Last Will, it is most likely that Walter Bolton III would be the sole or primary beneficiary.

13. The Petitioner telephonically contacted Walter Bolton III directly and also requested that the Petitioner's attorney write to Walter to advise Walter of his rights in and to preserve his mother's assets, and to reiterate the Petitioner's concerns for seeking justice for his mother (*see* Exhibit "G" annexed hereto). The Petitioner believes, however, that certain family members have a serious self-interest in exercising influence over Walter Bolton III for their own self-preservation and have convinced him that it is not in his best interest to move forth and protect his own property interests and search for Jackie's murderers by opening up a curatorship; this despite the fact that Walter Bolton III himself has admitted his mother considered the Petitioner a "guardian angel." As of the date of the filing of this Petition, no written response has even been received from Walter Bolton III or an attorney on his behalf.

14. Therefore, the Petitioner, Barbara Norcross, requests that Walter Bolton III because of his possible inability to protect his own interests, who is a non-resident of Florida and who, upon information and belief is a construction worker with little or no financial experience, be appointed a co-Curator because of his natural preference along with a local independently empowered, co-corporate fiduciary, or otherwise local court-appointed individual, to perform the functions of a court-appointed co-Curator including authorization of the Court to exercise all the functions and duties of a Personal Representative subject

to certain reservations of sale approval as the Court deems appropriate.

15. The Petitioner has no interest in gaining custody or control or management authority over Jacqueline Levitz' assets or properties and is strictly dedicated to bringing Jackie's murderers to justice as an interested person in the proceedings.

WHEREFORE, the Petitioner, BARBARA NORCROSS, requests this Honorable Court to immediately appoint co-Curators over the assets of the estate of the missing Palm Beach County resident Jacqueline Levitz and for authorization for those co-Curators to exercise the full powers and duties of a Personal Representative subject to my reserved powers by the Court and for any such other relief this Honorable Court deems appropriate and permissible by law.

Dated this 8th day of November, 1996.

ELLIOT S. SHAW, P.A.
Attorney for Petitioner
1601 Forum Place, #403
West Palm Beach, FL 33401

By: s/ Elliot S. Shaw
ELLIOT S. SHAW, ESQ.
Florida Bar No. 184150

APPENDIX D — ORDER GRANTING MOTION TO DISMISS PETITION FOR APPOINTMENT OF CURATOR OF THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, PALM BEACH COUNTY DATED JANUARY 10, 1997

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY

CASE NUMBER: 96-2042-CPM

IN RE: CONSERVATORSHIP OF MARY JACQUELINE LEVITZ

ORDER GRANTING MOTION TO DISMISS PETITION FOR APPOINTMENT OF CURATOR

THIS CAUSE came before the court for hearing when the conservator of the property of the Estate of Mary Jacqueline Levitz filed a motion to dismiss the petition for appointment of curator. The motion to dismiss is docket entry 34 and the verified petition for appointment of curator is docket entry 20.

Mary Jacqueline Levitz disappeared from her home in Vicksburg, Mississippi on November 18, 1995. On May 14, 1996, the Palm Beach County Clerk's office stamped in for filing a petition for appointment of a conservator, the application being filed by the only child of the absentee.

This court appointed Tiki Shivers, a sister of the absentee, to be the conservator of the Estate of Mary Jacqueline Levitz on June 11, 1996, and further designated

Harris Trust Company to be the custodian of the cash assets of the conservatorship by a separate order also entered on June 11, 1996. To the best of this court's knowledge, all interested family members of the absentee have notice of the conservatorship and there is no objection to the appointment of Tiki Shivers or Harris Trust Company. Notwithstanding all of this court activity, Barbara Norcross, a friend of the absentee, did file with this court on November 8, 1996, a petition to be appointed as a curator. In paragraph eight of that petition, she states that "no known formal court proceedings has as yet been opened either in Mississippi or in Florida." It would seem to this court that even a minimal amount of research in the clerk's office by Barbara Norcross or her attorney would have established the fact that a formal court proceeding had been pending for a number of months before Barbara Norcross filed her petition.

The petition of Barbara Norcross almost exclusively goes to her feelings that the family of the absentee is in some way directly or indirectly responsible for her disappearance and/or death. There is very little in the petition that would speak to her desire to become a curator whose obligation is to marshall the assets of the alleged decedent and otherwise properly maintain her individual assets. The conservator, Tiki Shivers, and the court appointed depository have been actively engaged in this for many months and it appears that no one in the family, or anyone other than the petitioner, Barbara Norcross, have any objection to the way they have been handling their responsibilities.

This court has reviewed the affidavit of Barbara Norcross and her verified petition for appointment of

curator. The court has also reviewed the affidavit of Attorney Shaw's legal assistant and Barbara Norcross' response to the motion to dismiss. Other than the fact that, Barbara Norcross alleges that a number of years ago she loaned the absentee $100.00, none of the pleadings that she has filed can establish her to be anything more than a friend of the absentee. She is not an interested person by any legal interpretation and she frankly has no more business asserting a claim to become the curator of this estate than would any other non-interested party who walked in off the street and made the representations and allegations that she has made.

If Barbara Norcross believes she has information relative to the disappearance of the absentee, then she has an appropriate venue to express that information by going to all of the authorities who are in some manner attempting to unravel this tragic mystery. However, she has no authority or right, to be interfering in the probate process and her request to get involved in the family's finances are better left to police authorities who have expertise in that area.

There is simply no merit to the petition of Barbara Norcross. Based upon the foregoing, it is

ORDERED AND ADJUDGED that the Motion to Dismiss the Verified Petition for Appointment of Curator is granted with prejudice.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 10th day of January, 1997.

s/ Gary L. Vonhof
GARY L. VONHOF, Circuit Judge

APPENDIX E — COMPLAINT DATED AND FILED JULY 14, 1997

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 97-8554

BARBARA NORCROSS,

Plaintiff,

vs.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz, ROBERT P. MARSCHALL, and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator, GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Defendants.

COMPLAINT

The Plaintiff, BARBARA NORCROSS, by and through her undersigned counsel, hereby complains against the Defendants and as grounds therefore, states as follows:

Jurisdiction

1. Federal Court jurisdiction of this matter is based on 28 U.S.C. §1331, 42 U.S.C. §1983, 42 U.S.C. §1985(2) and 42 U.S.C. §1986 and is for equitable relief and legal damages plus costs and attorney's fees.

Appendix E

Parties

2. The Plaintiff, BARBARA NORCROSS, is a resident of Palm Beach County, an internationally renown holographic psychic, and six year professional confident and friend of Mary Jacqueline "Jackie" Levitz. This relationship lasted until Jackie Levitz's gruesome, violent and bloody disappearance on or about November 18, 1995 from Jackie's just acquired residence in Vicksburg, Mississippi.

3. Defendant TIKI SHIVERS is one sister of eight sisters and brothers of Jackie Levitz and is a resident of Tallulah, Madison Parish, Louisiana, across the river from Vicksburg, Mississippi. TIKI SHIVERS petitioned for and was appointed the Conservator of all of the assets and property of Mary Jacqueline Levitz on July 29, 1996 by the Palm Beach County State Circuit Court, Probate Division, Case No. CP-96-2042-IB. She was also appointed by the Probate Court to be the Guardian Ad Litem for her missing sister (despite a direct conflict of interest with her legal appointment as Conservator for her sister) on February 25, 1997 in Palm Beach County State Circuit Court, Civil Division, Case No. CP-96-3329-IB, a collateral case which was commenced by Northern Trust Bank of Florida, N.A., as Trustee of the Ralph Levitz Trust U/A dated October 23, 1993.

4. Defendant ROBERT P. MARSCHALL is a practicing attorney in Palm Beach County, Florida and is the attorney, upon information and belief, who drafted and prepared estate planning documents for Jackie Levitz and

now is co-counsel to TIKI SHIVERS as Conservator and guardian ad litem.

5. Defendant ANDREW OSTROW is a practicing litigation attorney in Palm Beach County, and is co-counsel for Defendant TIKI SHIVERS as Conservator and guardian ad litem.

6. Defendant GARY L. VONHOF is a resident of Palm Beach County and until 1997, was the sitting Circuit Court Probate Judge for Central and Northern Palm Beach County. He is now a sitting Circuit Court Judge in South County Family Court. He was appointed to the County Court by then Governor Bob Martinez after being rejected five times as not qualified by the Judicial Nominating Committee even for a judgeship on the County Court, and then less than two years later, was elevated by Governor Bob Martinez to the Circuit Court bench over six qualified names recommended to the Governor by the Judicial Nominating Committee.

7. Defendant JOHN J. HOY is a resident of Palm Beach County and is currently the sitting Circuit Court Probate Judge for central and Northern Palm Beach County. He is essentially a tyrant sitting on a Circuit Court Bench after having been repeatedly rejected as unqualified to be a Circuit Court Judge. Other than having been a negligence attorney, little is known about his background, but he is certainly not qualified or competent to be the Probate judge for two-thirds of Palm Beach County.

8. Upon sensing the horror of Jackie Levitz's disappearance on or about November 18-20, 1995, via

holographic psychic wavelengths — as well as the media confirming her visions — the Plaintiff, BARBARA NORCROSS, desperately tried to make contact with Jackie's family (whom the Plaintiff knew well from past consultations and meetings) and other close friends to help find Jackie's abductors/murderers. The Plaintiff was particularly unnerved by Jackie's uptight nervousness at a luncheon in Palm Beach just days before her disappearance at which time the Plaintiff warned Jackie not to go to Vicksburg.

9. Jackie's "grief stricken" family from Louisiana, the Broadways, then put up a disgraceful $10,000 reward to the public at large for any information leading to the discovery of their multi-millionaire sister. Subsequent thereto on December 21, 1996, Defendant TIKI SHIVERS appeared on national television on *America's Most Wanted* making a public solicitation offering a $200,000 reward for any information leading to the discovery of the whereabouts of Jackie Levitz. This statement and offer were made by Defendant TIKI SHIVERS knowing that her sister was murdered.

10. Notwithstanding the bloody viciousness of the murder of Jackie Levitz, neither the Plaintiff nor any of Jackie's close Palm Beach friends were ever interviewed by the FBI, the Vicksburg Police, the Warren County Sheriff's office, nor any local Palm Beach County or City police authorities. However, because of the confidential information Jackie had given her, the Plaintiff insisted on meeting with the FBI both as an intimate friend of Jackie Levitz and professional confidant but also as a holographic

psychic who has worked successfully with law enforcement authorities on solving murders including one in Key West, Florida. Only at the written behest of Congressman Mark Foley did the Plaintiff finally obtain a meeting with the FBI in West Palm Beach who never followed through with her nor would the FBI even provide the Plaintiff with an artist for assistance to her in drawing a composite picture of one of the two actual killers hired by the murderers.

11. At a personal cost of thousands of out-of-pocket dollars, not to mention the value of the professional time, the Plaintiff convinced her legal counsel to travel with her to Vicksburg, Mississippi to meet with the Defendant TIKI SHIVERS and a representative of the Jackson, Mississippi FBI office, Vicksburg Police Chief Dowd and interim Warren County, Mississippi Sheriff Martin Pace. Defendant TIKI SHIVERS had telephonically confirmed her meeting with the Plaintiff in Vicksburg. But upon arrival at the Plaintiff's hotel in Jackson, 45 miles east of Vicksburg, the Plaintiff learned telephonically that TIKI SHIVERS for no known reason was unavailable to meet with her, as were all the FBI agents, including Agent Jim Frier who repeatedly publicly states that his FBI office follows up on every lead in the Jackie Levitz case. This is an outright misstatement of fact. However, solely because of severe racial politics in the Sheriff s office during an election over a vacancy as a result of former long time, white Supremacist Sheriff Paul Barrett recently having been indicted and convicted of bribed perjury in a Federal Court in 1996, a meeting was arranged with interim Sheriff Martin Pace and Vicksburg Police Chief Dowd. Police Chief Dowd conveniently did not show up at the meeting with Sheriff Martin Pace, the

Plaintiff and her legal counsel. Despite this meeting in which Sheriff Pace remained stone-faced but very nervous and follow-up letters to this date, not a single public or private communication or press conference has ever been held by any Mississippi law enforcement agency or the FBI on the status and/or findings of fact of the Jackie Levitz case.

12. Furthermore, it was learned that Defendant TIKI SHIVERS expressly told the tenant caretaker of Jackie's Vicksburg residence, Pat, to lie by his telling the Plaintiff he could not let the Plaintiff into the Vicksburg residence because his minister says the Plaintiff was "the devil." In fact, every response from Defendant TIKI SHIVERS and her conduct has been inculpatory and at times outright laughable but for the vicious seriousness of Jackie Levitz's murder.

13. After several months elapsed without a single word from any law enforcement authorities either privately or publicly from Defendants TIKI SHIVERS, ROBERT P. MARSCHALL and/or ANDREW OSTROW, the Plaintiff felt it was incumbent upon her to advise the Palm Beach County Probate Court that from all preliminary investigations, the financial asset and transfer records of Jackie Levitz would lead a path directly to her murderers. The Plaintiffs legal counsel agreed. Furthermore, as an officer of the Court, legal counsel felt that if anything, he was obligated to advise the Palm Beach County Probate Court of these serious and disturbing matters the Plaintiff had uncovered. The Probate Court, via a curatorship, was in the best possible position to take control and examine and review the financial records and transfers of Jackie

Levitz because it is the Probate Court's express judicial obligation to protect and preserve the assets of the missing person and to take every step possible to foster the finding of the location of the missing person whose absence is the reason for the conservatorship in the first place. Furthermore, the Plaintiff has a vested constitutional right to access to the Courts and the right to constitutional procedural due process to pursue her creditor's claim as well, not to mention the duty of a citizen to assist and cooperate with law enforcement and the Courts in administering justice.

14. On November 8, 1996, a Verified Petition for Appointment of Curator and Notice of Suspicion of Murder was filed with the Palm Beach County Probate Court, Defendant GARY L. VONHOF. In that petition, the Plaintiff expressly stated in paragraph 15 that "*the Petitioner has no interest in gaining custody or control or management authority over Jacqueline Levitz's assets or properties and is strictly dedicated to bringing Jackie's murderers to justice as an interested person in the proceedings.*" (Emp. added.) Furthermore, the sole relief requested in the petition (other than the $100 creditor's claim) was as follows:

> WHEREFORE, the Petitioner, BARBARA NORCROSS, requests this Honorable Court to immediately appoint co-curators over the assets of the estate of the missing Palm Beach County resident Jacqueline Levitz and for authorization for those co-curators to exercise the full powers and duties of a Personal Representative subject to any reserve powers by the court and for any

such other relief as this Honorable Court deems appropriate and permissible by law.

15. The Plaintiff sought no damages, except repayment of the $100 she had loaned Jackie, no legal fees nor any injunctive relief other than a review of the financial transfer records and the possibility of deposing Defendant TIKI SHIVERS et al. and the $200,000 reward which has been assigned. The petition was clearly intended as a vital advisory to the Probate Court that the financial records in Jackie's estate would most certainly lead directly to her murderers, and that Defendant TIKI SHIVERS had acted in an extremely inculpatory, non-exculpatory manner.

16. Section 733.501, Fla. Stat. provides that "when it is necessary, the Court may appoint a curator and issue Letters of Curatorship to take charge of the estate of a decedent until Letters are granted." Although the Plaintiff sought access to the Courts for repayment as an interested party as a technical creditor to redress her property rights and to seek her property interest in the $200,000 reward, if entitled. The Plaintiff also wished to advise the Probate Court of these serious concerns that any legitimate sitting Probate Court acting in the best interests of the deceased Jackie Levitz would immediately act upon to review those financial records and be happy to provide the Plaintiff with procedural due process to assist in determining Jackie Levitz's whereabouts.

17. Incredibly, Defendants TIKI SHIVERS, ROBERT P. MARSCHALL and ANDREW OSTROW, despite all the public pleas for information, filed a Motion to Dismiss the

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Verified Petition for Appointment of Curator by Defendant TIKI SHIVERS as conservator, and they and the Probate Court outright refused to listen to any information given. The Plaintiff then filed a Response which even requested that "perhaps a, specially appointed Court Master can properly investigate estate records and fully depose Tiki Shivers, her husband, Joe Broadway, Gerri Brown, etc." And, indeed, at oral argument over the Motion to Dismiss the Plaintiffs legal counsel made it clear the Plaintiff would welcome it even if the Court itself reviewed the financial records and transfers in camera.

18. In fact, the Plaintiff had already learned that Jackie's queen-size mattress was soaked through with blood to such an extent that all law enforcement authorities in Vicksburg have agreed that unless Jackie received a major transfusion within mere hours of the abduction, she could not have survived that many pints of lost blood in a desperate struggle for life. Accordingly, based on this and further information, it became quite clear the Petition for Conservatorship was a fraud on the Court and Defendant TIKI SHIVERS and her attorneys, Defendants ROBERT P. MARSCHALL and ANDREW OSTROW, well knew that Jackie Levitz was not alive and that Defendant TIKI SHIVERS was in some way involved in the murder and its cover-up.

19. In the past, legal counsel for the Plaintiff would have had Judge Gary L. Vonhof recused from any adversarial client matters that he files in the Probate Court because of a previous responsive challenge by the Plaintiff's legal counsel to Defendant GARY L. VONHOF's bias and

incompetence, and Plaintiff's legal counsel is well familiar and was present when the political pay-off got Defendant GARY L. VONHOF appointed to the Florida judiciary over qualified candidates. Unfortunately, Plaintiff's counsel thought the matter was so obviously non-adversarial but extremely vital and important to the Probate Court in a curatorship or conservatorship that regardless of personal invidious animus and hatred by Defendant GARY L. VONHOF toward legal counsel and the Plaintiff because of her status as a believer in psychic wavelengths, he did not make a motion to recuse Defendant GARY L. VONHOF believing he would act pursuant to his oath of office and judicial obligations under the Judicial Code of Conduct in this instance. Furthermore, the Plaintiff knew that as a conservator, Defendant TIKI SHIVERS was under the highest fiduciary standard and duty, expressly made equivalent to the standard of a guardian pursuant to Florida Conservatorship Statute §747.035.

20. Notwithstanding this, Plaintiff and her legal counsel, after spending thousands of dollars on out-of-pocket costs and tens of thousands of dollars of professional time in the best public spirit of any American citizen and taking personal risk of physical violence against them, were castigated by the Defendant GARY L. VONHOF in his Order dated January 10, 1997, who was so blinded and filled with discriminating invidious animus and embarrassing hatred for Plaintiff's counsel, and the Plaintiff as a psychic, that he denied the Plaintiff her basic procedural due process rights to any evidentiary hearing and completely and entirely ignored any facts presented or show any concern whatsoever for the best interests of the person and

property of Jackie Levitz and maliciously and intentionally denied the Plaintiff access to the civil Courts. In fact, the Defendant GARY L. VONHOF couldn't even read the Petition properly. The Court based on its own individual and personal agenda, ignorantly writes: "Notwithstanding all of this Court activity, Barbara Norcross, a friend of the absentee, did file with this Court on November 8, 1996 a *Petition to be appointed as a curator*." (Emp. added.) This is a direct contradiction of the statements and the allegations in the petition itself in which it clearly states that the Plaintiff had no interest in becoming curator or involving herself with the financial affairs of Jackie Levitz or her estate. In fact, the Order itself is geared strictly toward putting down the Plaintiff and her legal counsel instead of expressing a single concern or iota of compassion for Jackie Levitz's whereabouts and protection of her assets and couldn't care less that Defendant TIKI SHIVERS is alleged to be involved with Jackie's murder.

21. As a result of the Plaintiff s lawful petition, as hoped for, the publicity surrounding it did in fact bring forth vital transcript testimony from a highly credible, independent witness, Patricia King, who came forward to testify voluntarily that Defendant TIKI SHIVERS, just weeks after Jackie's disappearance, was anything but an aggrieved relative but quite the contrary, an ecstatic and happy bouncing woman replacing Jackie's expensive Palm Beach furnishings with cheap imitation arts and antiques made in China and appearing to have replaced herself in the role of her beautiful millionaire sister, Jackie Levitz, whom Defendant, TIKI SHIVERS had great jealousy over.

22. One Mickey Ducret, a long time Washingtonian friend of Jackie, also came forward to give credible independent transcript testimony that Jackie Levitz had no use for her maiden family, and little contact with them, and would never have moved out to Vicksburg except for material financial interests and or deep financial concerns.

23. In addition to this, a retired senior law enforcement official of the Federal government with over 50 years of experience and service at the highest government levels fully familiar with Florida and the other southeastern states, including Mississippi law enforcement, started working and compiling information by traveling to Vicksburg several times and visiting South Florida several times as well. There was also a female assistant to assist in verification of the various investigation facts and to extend undercover surveillance.

24. On or about January, 1997, Defendant GARY L. VONHOF was finally switched out of Probate and transferred to Family Court in South Palm Beach County. In his place and stead, Defendant JOHN J. HOY was appointed to the Probate bench.

25. After the Plaintiff was denied a due process evidentiary hearing and proper access to the Courts by Defendant GARY L. VONHOF, Defendant TIKI SHIVERS and Defendants ROBERT P. MARSCHALL and ANDREW OSTROW incredibly filed a Motion for Award of Attorney's Fees under §57.105, Fla. Stat., on behalf of Defendant TIKI SHIVERS as conservator of Jackie's estate which fees are almost never granted.

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26. The Defendant, JOHN J. HOY, with express invidious intent to deprive Plaintiff of her Fourteenth Amendment procedural due process rights and access to the Courts, not only denied the Plaintiff the right to an evidentiary hearing on whether the Plaintiffs Petition had factual merit, but he also invidiously denied the Plaintiff the common sense right to even speak or testify in open Court, also a grievous denial of her constitutional right to access to the State Courts and Fourteenth Amendment procedural due process fights.

Conspiracy

27. Defendant JOHN J. HOY, under color of state law, by abuse of the State judiciary, and well outside of any State judicial role, function or purpose, conspired with Defendant GARY L. VONHOF intentionally and purposely to deprive and defeat the Plaintiff of her equal protection and constitutional rights to Fourteenth Amendment procedural due process and access to the State Courts as all other citizens in the United States because of invidious animus and discriminating conduct toward her legal counsel and the Plaintiff as a psychic thus depriving the Plaintiff of her Fourteenth Amendment equal protection rights. This gross misuse of the state judiciary to foster crazed personal invidious animus and hatred is a grave and odious abuse of their state judicial robes and breach of their sworn obligation to uphold the Constitution of the United States and protect the property and person of a conservatorship.

28. Both Defendants GARY L. VONHOF and JOHN J. HOY did, upon information and belief, have personal

meetings in furtherance of their conspiracy to harass, intimidate, threaten and punish the Plaintiff s legal counsel and Plaintiff by depriving the Plaintiff of her constitutional rights. This conduct is entirely irrational and discriminatory against the Plaintiff. Such private conspiracy, conducted under color of state judicial law, was based purely on private and corrupt motives in order to deter and punish by intimidation, retribution and threat the Plaintiff s coming forth as a party and witness to testify freely about Jackie's murder and theft of her property by the conservator Defendant TIKI SHIVERS.

29. Pursuant to this private individual conspiracy under color of state law, Defendant JOHN J. HOY by State Circuit Court Order dated May 19, 1997 imposed over $4,000 in attorney's fees against the Plaintiff and her legal counsel in favor of a conservatorship estate with over $4 million in assets.

30. Furthermore, upon information and belief, both Defendants GARY L. VONHOF and JOHN J. HOY held ex-parte meetings with Defendants ROBERT P. MARSCHALL and ANDREW OSTROW on behalf of Defendant TIKI SHIVERS in furtherance of the conspiracy to deprive the Plaintiff of her constitutional rights to continue Defendant TIKI SHIVERS' cover-up of her sister's murder and theft of her property.

31. Furthermore, Defendants GARY L. VONHOF and JOHN J. HOY had full transcripts and information advising them of the illegal conspiracy of murder and aided, abetted and assisted the maintenance of the obvious falsity of the

conservatorship petition and constitutional punishment of the Plaintiff, and the theft of conservatorship property by Defendants, TIKI SHIVERS, ROBERT P. MARSCHALL and ANDREW OSTROW. At all material times, Defendants, GARY L. VONHOF and JOHN J. HOY had full power and authority to prevent or at least investigate the truth of the allegations and to prevent the conspiratorial constitutional deprivation of Plaintiff's rights. Instead, in furtherance of the constitutional conspiracy of Defendants TIKI SHIVERS, ROBERT P. MARSCHALL, ANDREW OSTROW, GARY L. VONHOF and JOHN J. HOY intentionally, and/or with reckless disregard for the truth, refused to do so but instead intimidated, harassed and punished the Plaintiff for coming forth with credible information on a very solvable murder and theft of conservatorship property.

32. Since the unconstitutional order imposing §57.103, Fla. Stat. attorney's fees against the Plaintiff, the retired senior Federal law enforcement officer, after extensive investigation, determined the following facts:

> (I) Jackie Levitz would never, ever have moved to the corrupt backwater town of Vicksburg, Mississippi without a substantial and material financial reason;
>
> (ii) That material financial reason, independent of any substantial transfers and/or loans to relatives of which Jackie was demanding to be paid back because of the death of her furniture magnate husband, Ralph Levitz, was that Jackie Levitz had become embroiled

with a major fraudulent art and antique scam which operates in at least four Southeastern states including Mississippi, Louisiana, Georgia and most definitively Florida and which, in the opinion of the law enforcement officer, reaches to the highest levels of law enforcement and government;

(iii) That besides Jackie Levitz, the following persons are actively involved with that art and antique fraud ring: Defendant TIKI SHIVERS and her son Deputy Sheriff Jimmy Shivers, Jr.; her husband, Jimmy Shivers; Ted Mackey, upon information and belief, an attorney and bed and breakfast owner in Vicksburg; E. Archie Nesmith a resident of Georgia and West Palm Beach, Florida; Lee Menichetti, a resident of West Palm Beach; and Jim and Nicole Brandon who use their art and antique business in West Palm Beach, Florida as a front for the phony art and antique operation much like the fraudulent art and antique dealer in Central Florida, Darrell Tyrone Coker of Jewelry Auction, Inc.;

(iv) That in addition to these individuals, it is believed that one nephew of Ralph Levitz, Gary Levitz, a man with an extensive record who is now in the hands of the Federal witness protection program, may also be involved with this criminal art and antique fraud ring. Furthermore, the criminal ring may be using the Levitz furniture company to further its conspiracy in one manner or another;

(v) That Jimmy Shivers, Jr. is a Deputy Sheriff of Madison Parish, Louisiana, directly across the river

from Vicksburg, Mississippi, and that he operates his own "Shivers Security Agency," upon information and belief, the largest supplier of security personnel to the gambling casinos in Vicksburg and other businesses in the area, and, if not actively in control of law enforcement in the Vicksburg, Mississippi area, a cesspool of corruption, cronyism, racial animosity and the center of operations for this fraud ring is highly influential;

(vi) That the Jackson, Mississippi FBI office and Agent Jim Frier is either fully in bed with the Defendant, TIKI SHIVERS and her criminal conspirators and is involved with the corrupt Sheriff Martin Pace, and the Defendants or is entirely incompetent. In any event, the office has done absolutely nothing related to honest investigation of the Jackie Levitz murder despite Agent Jim Frier's public statements and the Vicksburg authorities' protestations and by all appearances and beliefs, are involved in a serious cover-up of the murder of Jackie Levitz and the major art and antique fraud scam;

(vii) That information directly received from informants within law enforcement in Vicksburg, have confirmed that Jackie's mattress was so blood soaked with Jackie's blood that everyone knows she is deceased but for some "strange" reason refuse to say so; that the investigation on this murder has been embarrassingly inadequate; that there is no possibility that Defendant TIKI SHIVERS or Deputy Jimmy Shivers, Jr. or any others related to them would ever

be seriously questioned or interrogated by any law enforcement authorities, Federal or State in Vicksburg, Mississippi about the disappearance and murder of Jackie Levitz;

(viii) That part of this criminal activity of the faudulent art and antique ring is taking place in Palm Beach County.

33. Defendants ROBERT P. MARSCHALL and ANDREW OSTROW in open Court and telephonically, have further admitted that they have refused to fulfill their sworn obligation as attorneys to fulfill their fiduciary duties to Jackie Levitz representing her conservator to make certain her assets are not pilfered by the conservator, as testified to by Patricia King; that their sole goal is direct involvement in the conspiracy to cover up the murder and major criminal fraud ring of Defendant TIKI SHIVERS, et al., and instead of protecting the conservatorship, are using it to cover up Jackie's murder in Vicksburg by depriving the Plaintiff of her constitutional rights by use of the judiciary, under color of state law, to unconstitutionally punish and intimidate the Plaintiff. In fact, these two attorneys with fiduciary duties to Jackie Levitz, have failed to act as lawyers to a conservator but have acted strictly as criminal defense attorneys for Defendant TIKI SHIVERS looking to block evidence of serious criminal activity and all other vital and helpful information.

34. Defendant TIKI SHIVERS was actively involved in the conspiracy to murder Jackie Levitz, cover it up and as conservator, steal her remaining assets and literally steal Jackie's life.

35. Furthermore, the Plaintiff has received a number of telephonic death threats stating she is getting into dangerous waters with her efforts on Jackie's behalf over her head and to cease and desist these efforts "or else."

36. Based on the above allegations in paragraphs 1 through 35, the Defendants TIKI SHIVERS, ROBERT P. MARSCHALL, ANDREW OSTROW, GARY L. VONHOF and JOHN J. HOY have violated the constitutional rights of the Plaintiff under 42 U.S.C. §1983.

37. Based on the above allegations, the Defendants TIKI SHIVERS, ROBERT P. MARSCHALL, ANDREW OSTROW, GARY L. VONHOF and JOHN J. HOY have violated the constitutional rights of the Plaintiff under 42 U.S.C. §1985(2).

38. Based on the above allegations, the Defendants TIKI SHIVERS, ROBERT P. MARSCHALL, ANDREW OSTROW, GARY L. VONHOF and JOHN J. HOY have violated the constitutional rights of the Plaintiff under 42 U.S.C. §1986.

39. As a result of these constitutional violations, the Plaintiff BARBARA NORCROSS has been damaged by the outlay of costs and expenses, legal fees, and the Court ordered imposition of attorney's fees, the $200,000 offered reward (assigned as of the day after vested in the Plaintiff to the Center for Abused Women and the retired senior law enforcement official), personally humiliated and degraded, damaged by over $4,000 imposition of attorney's fees in total compensatory damages in the amount of $5,000,000.

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WHEREFORE, the Plaintiff asks for the following relief:

1. An equitable injunctive order seizing the financial records of the conservatorship and Jackie Levitz's financial accounts for the past five years for direct review by the Court or reference to a special master at the cost of the Defendants and/or reference to legitimate law enforcement authorities with reporting back to this Federal District Court and any other equitable or injunctive relief as this Court deems appropriate to establish the validity of the State Court statements of the Plaintiff and their truth and integrity.

2. For compensatory damages in excess of $5,000,000, punitive damages, costs and attorney's fees.

Demand for Jury Trial

The Plaintiff BARBARA NORCROSS hereby demands a trial by jury on all issues of triable fact.

ELLIOT S. SHAW, P.A.
Attorney for Plaintiff
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West Palm Beach, FL 33401
(561) 687-9000

By: s/ Elliot S. Shaw
ELLIOT S. SHAW, ESQ.
Florida Bar No. 184150

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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Executed this 14 day of July, 1997.

s/ Barbara Norcross
BARBARA NORCROSS

Sworn to and subscribed before me
this 14 day of July, 1997.

APPENDIX F — MOTION TO RECUSE DATED OCTOBER 17, 1997

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

CIVIL ACTION NO. 97-8554-CIV-FERGUSON

BARBARA NORCROSS,

Plaintiff,

vs.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz, ROBERT P. MARSCHALL, and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator, GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Defendants.

MOTION TO RECUSE

The Plaintiff, BARBARA NORCROSS, by and through her undersigned counsel, hereby moves this Federal District Court to recuse itself immediately, and as grounds therefore, states as follows:

1. As this Court is well aware, the legal counsel for the Plaintiff has utter and complete lack of confidence, trust or respect for Kenneth L. Ryskamp's, as he is a man of hatred, bigotry and contempt for the U.S. Constitution and is entirely incapable of conducting fair and equitable

proceedings in any civil rights or personal rights case of any nature or kind (unless the Plaintiff is white and the Defendants are black, jews, Hispanic or other minorities). Kenneth L. Ryskamp is entirely incapable of providing a fair hearing particularly with the Plaintiffs legal counsel representing her.

2. The odds of being assigned Judge Kenneth L. Ryskamp three to four times in a row on civil rights cases brought to his court by this legal counsel are beyond chance. This raises serious questions on why all of this legal counsel's civil rights cases are always assigned to Kenneth L. Ryskamp, in an allegedly blind assignment system, and it is becoming quite apparent that this assignment system is not random at all. This legal counsel has never made a Motion to Recuse a Federal judge in his prominent and esteemed 27 year career in Florida or New York, but he is convinced that Kenneth L. Ryskamp is a Nazi at heart and should not only be recused from this civil rights case, but should be impeached as soon as possible for spitting on the United States Constitution. He is a danger to everyone.

3. Furthermore, the legal counsel for the Plaintiff has reason to believe as documented herewith that Kenneth L. Ryskamp is involved with unethical and illegal activity through his old law firm while on the Federal Bench and this investigation alone is enough to destroy even the appearance of propriety in this case by Kenneth L. Ryskamp.

4. This is a vital case involving a bloody, vicious murder of a beautiful Palm Beach woman and a theft of a conservatorship estate, an interstate fraudulent art antique

and jewelry criminal conspiracy and complicity by two corrupt State Court judges and two highly corrupt and unethical lawyers. There is no way that Judge Kenneth L. Ryskamp could ever sit fairly and judicially on this case (or lawfully let it be tried by a jury) and the documentation submitted to this Court is further evidence of Judge Ryskamp's history of hatred, bigotry and defiance of the United States Constitution. He is an abomination to any one who loves justice and respects and deeply desires an independent fair judiciary.

WHEREFORE, the Plaintiff immediately requests recusal and transfer of this case out of the Courtroom of Judge Kenneth L. Ryskamp as the Plaintiff's counsel believes him to be entirely unfit and incapable by proven track record to uphold the United States Constitution or to give any fairness whatsoever to the Plaintiffs civil rights case. Judge Kenneth L. Ryskamp is an embarrassment and an insult to the Federal District Court and the documents submitted well substantiate that.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to Maxine S. Ryan, Esq., Assistant Attorney General, 110 Tower, 110 Southeast 6th Street, 10th Floor, Ft. Lauderdale, FL 33301; Andrew A. Ostrow, Esq., 505 S. Flagler Drive, #1001, West Palm Beach, FL 33401, and Robert P. Marschall, Esq., 2401 PGA Blvd., #280-A, Palm Beach Gardens, FL 33410, this 17th day of October, 1997.

Appendix F

ELLIOT S. SHAW, P.A.
Attorney for Plaintiff
1601 Forum Place, Suite 403
West Palm Beach, FL 33401
Telephone: (561) 687-9000

By: s/ Elliot S. Shaw
ELLIOT S. SHAW, ESQ.
Florida Bar No. 184150

APPENDIX G — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA DENYING MOTION TO RECUSE DATED AND FILED DECEMBER 8, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8554-CIV-RYSKAMP

BARBARA NORCROSS,

Plaintiff,

vs.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz, ROBERT P. MARSCHALL, and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator, GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Defendants.

ORDER DENYING MOTION TO RECUSE

THIS CAUSE came before the Court upon plaintiff's Motions to Recuse **[DE 20 & 21]**, filed October 21, 1997 and October 23, 1997. Defendants have responded. The Court considers the Motions ripe for adjudication.

I. BACKGROUND

Plaintiff seeks to recuse or remove the undersigned United States District Judge. Plaintiff does not cite any

relevant statutory basis for recusal. In support of this Motion, the plaintiff alleges bias on the part of the Court by claiming the following:

(1) that plaintiff's counsel, Mr. Elliot Shaw ("Shaw") "has utter and complete lack of confidence, trust or respect" for the undersigned;

(2) that the undersigned is incapable of providing a fair hearing to plaintiff because of Shaw's representation of her;

(3) that the allegedly blind case-assignment system in the Southern District of Florida has been manipulated in cases involving Shaw;

(4) that the undersigned is presently involved in unethical and illegal activity; and

(5) that the undersigned's history of jurisprudence is inherently unfair and biased.

II. DISCUSSION

Two statutes govern the recusal of federal judges. Neither statute is cited by plaintiff. 28 U.S.C. § 144 allows a party to seek the removal of a district judge for "personal bias or prejudice." The moving party must file a sworn affidavit stating the pertinent facts supporting the party's belief that bias or prejudice exists, and counsel of record must file a certificate of good faith certifying that the affidavit is filed in good faith. Upon the filing of "a timely and sufficient affidavit" under this section, the "judge shall

proceed no further [in the case], but another judge shall be assigned to hear such proceeding." However, plaintiff has failed to file any such affidavit. Although the motion to recuse is signed by Elliot S. Shaw, Esq., this is not the equivalent of a sworn affidavit. Since the plaintiff failed to properly file the affidavit, this Court is not disqualified from hearing this proceeding pursuant to 28 U.S.C. § 144.

The only plausible basis for the undersigned's recusal in this case is 28 U.S.C. § 455(a)and(b)(1).[1] Subsection (a) requires that any federal judge disqualify himself if his "impartiality might reasonably be questioned" and subsection (b)(1) requires that any federal judge disqualify himself if he has "personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." These provisions are closely related. Under them, a judge has the responsibility of insuring that his presence on the bench will have an appearance of impartiality, otherwise, he should recuse himself. *U.S. v. Torkington*, 874 F.2d 1441 (11th Cir. 1989).

---

1. 28 U.S.C.A. s 455, reads in pertinent part:

> (a) Any justice, judge magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> > (1) Where he has a personal bias or prejudice concerning a party, . . .

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A judge can be considered impartial unless the moving party can indicate that the facts of the case fall within mandatory criteria for recusal. *Matter of Horton*, 621 F.2d 968, 970 (7th Cir.1980). The Supreme Court in *Liteky v. U.S.*, 510 U.S. 540, 114 S.Ct. 1147 (1994), addressed the issue of what constitutes "bias or prejudice" under § 455(b)(1), and concluded:

> The words ["bias" and "prejudice"] connote a favorable or unfavorable disposition or opinion that is somehow **wrongful or inappropriate**, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . , or because it is excessive in degree . . . .

Id. at 1155 (emphasis in the original).

Plaintiff advances one conclusory argument that triggers a § 455(a) and (b)(1) inquiry. Plaintiff argues that the undersigned is "entirely incapable of providing a fair hearing particularly with the Plaintiff's legal counsel representing her." Motion, at 1. Essentially, this statement impugns the undersigned's ability to impartially adjudge any matter in which Shaw is involved. In assessing the validity of plaintiffs argument, the standard under § 455 is an objective one: "The test is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Parker v. Conners Steel Co.*, 855 F.2d 1510, 1524 (11th Cir.1988), *cert. denied*, 490 U.S. 1066 (1989).

Appendix G

The facts underlying the grounds on which recusal is sought are few. The motion cites no particular occasion of the undersigned's demonstrated bias against Shaw or the plaintiff. Plaintiff attaches to her Motion to Recuse an appellant's brief in a separate and unrelated case involving her counsel. This brief appeals the entry of a summary judgment order entered by the undersigned. Also attached to the Motion to Recuse is a list of newspaper articles that for the most part discuss the undersigned's past judicial decisions and confirmation hearing before the United States Senate. From these documents, the Court may deduce that Shaw's unhappiness with the undersigned stems from general hostility because the undersigned entered a prior summary judgment order in a case handled by Shaw, and from perceived differences in judicial philosophy between himself and the undersigned. However, neither of these points raises an objective significant doubt as to the undersigned's impartiality or bias against Shaw in this case.

It is well settled that a judge's judicial philosophy and previous rulings can not form a proper basis for recusal. *United States v. State of Alabama*, 828 F.2d 1532, 1543 (11th Cir.1987). "All judges come to the bench with a background of experiences, associations, and viewpoints." *Id.* As Justice Rehnquist commented, proof that a judge's mind was a complete *tabula rasa* would be evidence of lack of qualification, not lack of bias. *Laird v. Tatum*, 409 U.S. 824, 835, 93 S.Ct. 7, 14 (1972).

Rather, a judge's bias must be due to his appraisal of a party personally. *United States v. State of Alabama*, 828 F.2d at 1543. Alleged judicial bias, opinions alleged to be

formed in conjunction with a judge's rulings and other judicial duties, is generally insufficient to require the granting of a motion to recuse. *United States v. Archbold-Newball*, 554 F.2d 665, 682 (5th Cir.1977). Relatedly, "ours is not a system of disposable judges wherein members of the judiciary may be discarded after a single use." *Id.* Shaw appears to believe that the undersigned holds a personal bias against him because of a prior summary judgment order entered against another Shaw client. The undersigned enters numerous summary judgment orders every year. It is ludicrous and false to believe that he does so on the basis of his like/dislike for counsel or for any reason other than a trustworthy and sincere interpretation of present law. The fairness of our judicial system might be severely compromised if parties could successfully bring about the recusal of judges by citing a previous adverse result and declaring a dislike for them.

Also, Shaw's demonstrated hostility toward the undersigned does not create bias that would trigger a duty to recuse under § 455. *See Bradley v. Milliken*, 620 F.2d 1143 (6th Cir. 1980), *cert. denied* 449 U.S. 870, 101 S.Ct. 207 (1980). Plaintiff's hostility toward the undersigned is underscored by numerous harsh personal attacks and an accusation of present illegal activity. These are serious charges to be sure, but they are unfounded. Shaw's general hostility toward the undersigned fails to raise a significant doubt as to the undersigned's impartiality or bias in the present matter. Rather, it demonstrates the lengths this attorney will go to have a judge of his choosing.[2] The court

2. This is plaintiff's second attempt to manipulate judge assignment in this matter. In plaintiff's first attempt, an identical

(Cont'd)

in *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307 (2nd Cir.1988), challenges courts to discern the party's motives in these situations:

> In deciding whether to recuse himself, [the] trial judge must carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning his impartiality might be seeking to avoid the adverse consequences of his presiding over their case. Litigants are entitled to an unbiased judge; not to a judge of their choosing.

Id. at 1312. This Court is convinced that this motion to recuse is merely another attempt by plaintiff and her counsel to choose the judge who will hear her case.

Another significant thrust of plaintiff's argument is that the undersigned is unfit to hold judicial office. The United States Constitution delegates to the President and to Congress the task of determining and regulating the fitness

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(Cont'd)

Complaint was filed in West Palm Beach and assigned to the undersigned, but then dismissed within an hour of the filing. Then, the Complaint was refiled in Miami on the same day and marked as an "original proceeding." The second Complaint was assigned to another judge in the Southern District of Florida, but was later transferred to the undersigned pursuant to the Local Rules regarding judge assignment.

of the federal judiciary.[3] It is not a proper basis for recusal under either of the relevant statutes.

Similarly, the Court finds no basis for plaintiffs allegations of a corrupt case-assignment system. Plaintiff presents a meager argument in support of this allegation. She merely claims that three of four cases filed by Shaw have been assigned to the undersigned and declares this result "beyond chance." Perhaps, it is improbable that Shaw would draw the undersigned in three out of four cases in the blind, random assignment system, but it is far from "beyond chance." The undersigned will not disqualify himself for this reason.

From all indications, it appears that the plaintiff is using the present motion to recuse as a forum shopping device. This ploy will not succeed. The federal system does not

3. United States Constitution Art. III, § 2, states in relevant part:

> [The President] shall have Power, by and with the Advise and Consent of the Senate, . . . shall appoint . . . , Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.

These judges, "both of the supreme and inferior Courts, shall hold their Offices during good Behaviour." Art. III, § 1. Power to remove judges rests with each house of Congress, pursuant to their Art. II powers. Art. II § 2, cl. 5, provides that the House of Representatives "shall have the sole Power of Impeachment," while Article I, § 3, cl. 6, invests the Senate with "the sole Power to try all Impeachments."

allow a party to pick and choose the judge that will hear its case. Finding no objectively significant doubt as to the undersigned's bias or partiality in this matter, the undersigned will not recuse himself from this matter under § 455(a) or (b)(1).

III. CONCLUSION

THE COURT has considered the Motion and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that plaintiff's Motions to Recuse **[DE 20 & 21]** be, and the same are hereby **DENIED**. The Clerk of Court shall **REMOVE from the public file the appendices to plaintiff's Motions to Recuse and file them in a sealed envelope.**

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 8 day of December, 1997.

s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

APPENDIX H — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA GRANTING DEFENDANTS' MOTIONS TO DISMISS DATED AND FILED DECEMBER 8, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 97-8554-CIV-RYSKAMP

BARBARA NORCROSS,

Plaintiff,

vs.

TIKI SHIVERS, individually and as Conservator for Mary Jacqueline Levitz, ROBERT P. MARSCHALL, and ANDREW OSTROW, individually and as attorneys for Tiki Shivers as Conservator, GARY L. VONHOF and JOHN J. HOY, individually and as State Circuit Court Judges,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

THIS CAUSE came before the Court upon defendants' Motions to Dismiss **[DE 11 & 18]**, filed September 17, 1997 and October 14, 1997. Plaintiff has responded to each motion, and defendants have replied. The motion is ripe for adjudication.

Appendix H

I. BACKGROUND

This is the case of the spurned holographic psychic. According to the allegations of the Complaint, plaintiff, Barbara Norcross, was an "internationally renown [sic] holographic psychic." Allegedly, plaintiff became a professional confident and friend of Mary Jacqueline "Jackie" Levitz. This relationship continued for six years until November 18, 1995, when Levitz tragically disappeared. On May 14, 1996, the only child of the absentee filed a petition for appointment of a conservator. On June 11, 1996, the court appointed the absentee's sister, Ms. Tiki Shivers, as conservator. By separate order on this date, the court designated the Harris Trust Company to be the custodian of the cash assets of the estate. These orders were signed by defendant, the Honorable Gary L. Vonhof of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

In the wake of Ms. Levitz disappearance, plaintiff allegedly spent significant amounts of effort and money attempting to determine what happened to her. Plaintiff traveled to Mississippi and contacted various law enforcement agencies handling the Levitz investigation seeking to accumulate greater information about the disappearance. Plaintiff alleges that she was intermittently spurned by investigators close to the case. Theorizing that Ms. Levitz had been murdered by family and some sort of cover-up was taking place, plaintiff filed a Verified Petition for Appointment of Curator and Notice of Suspicion of Murder in the Palm Beach County Probate Court on November 8, 1996, and hinted that the court should appoint

her as a co-curator of the estate. In the petition, plaintiff incorrectly maintained that no formal court proceeding had been opened, ignoring the fact that Ms. Shivers had been appointed as conservator of the estate five months prior. Plaintiff also put forth a conspiracy theory that Ms. Levitz was murdered by a sibling in connection with the "newly emerging Mississippi River boat gambling industry's debt collection practices." Petition at 4. The probate court, by defendant Judge Gary L. Vonhof, dismissed plaintiff's petition and granted attorney's fees to the conservator, pursuant to Fla. Stat. § 57.105. The court found that all of the absentee's interested family members had notice of the conservatorship and none had voiced objection to the existing conservatorship. Further, it found that plaintiff is "not an interested person by any legal interpretation and she frankly has no more business asserting a claim to become the curator of this estate than would any other non-interested party who walked in off the street . . ." Order Granting Motion to Dismiss at 2. The probate court concluded that plaintiff's petition had "no merit" and that plaintiff "has no authority or right to be interfering in the probate process." *Id.* at 3. In January 1997, Judge Vonhof was transferred from the probate division of the court, and the case was assigned to Judge John J. Hoy. On May 19, 1997, the probate court, by Judge Hoy, entered a final order granting defendants' motion for attorney's fees. No appeal was taken.

The origins of plaintiff's present federal action may be traced to a complaint, Case No. 97-8546-CIV-RYSKAMP, filed July 14, 1997 in West Palm Beach. This Complaint, identical in all respects to the present one, was filed in at

11:07 a.m. and assigned to the undersigned. Less than one hour later in West Palm Beach, at 12:01 p.m., plaintiff voluntarily dismissed this Complaint. Later that same day, plaintiff refiled the action via night box with the clerk's office in Miami. On the civil cover sheet, plaintiff listed the refiled action as an "original proceeding," and not a refiled action. Also, plaintiff did not list the initial filing as a "related case" on the cover sheet. The clerks office assigned the refiled action to the Honorable Wilkie D. Ferguson, Jr., and not to the undersigned. On October 10, 1997, it was reassigned to the undersigned pursuant to Local Rules 3.4(C) and 3.9(A).

The Complaint alleges that the defendant state judges, the conservatorship's attorneys, and the conservator conspired to deprive plaintiff of her constitutional rights by dismissing her attempt to influence the existing conservatorship, and then assessing attorney's fees against her. The Complaint makes numerous personal attacks against the defendants. Plaintiff claims that defendant Judge Vonhoff is unqualified, incompetent, and was appointed to the bench as political pay-off, and claims that defendant Judge Hoy is "certainly not qualified or competent to be the Probate judge for two-thirds of Palm Beach County." Complaint ¶¶ 6, 7, 19. Plaintiff theorizes that conservator Tiki Shivers, the sister of the absentee, was involved in the murder of Ms. Levitz, and is presently involved in its cover-up. Complaint ¶¶ 18, 20. Plaintiff claims that the murder took place pursuant to Shivers' involvement in a criminal art and antique fraud ring, which also includes members of the Mississippi FBI and various other "incompetent" law enforcement officials. Complaint ¶ 32.

This allegation differs from the state court petition where plaintiff alleged that the murder took place in connection with a Mississippi riverboat gambling operation. Plaintiff claims that the sole goal of defendants Robert Marschall and Andrew Ostrow, the conservatorship's attorneys "is direct involvement in the conspiracy to cover up the murder and major criminal fraud ring of Defendant Tiki Shivers, et al., and instead of protecting the conservatorship, are using it to cover up Jackie's (Ms. Jackie Levitz) murder." Complaint ¶ 33.

An obvious theme radiates from plaintiff's allegations, namely, that all who oppose her attempts at influencing the conservatorship, or otherwise disbelieve her conspiracy theory of Levitz murder, are involved in the conspiracy. A short look at how plaintiff contrived her theory might be useful. Plaintiff claims to be a "holographic psychic." This Court is at a loss to explain exactly what a holographic psychic is, but has found a useful associated definition. In *Warner Bros. Inc. v. American Broadcasting Corp.*, 720 F.2d 231, 237 (2nd Cir.1983), the court defined "holographic vision," as relates to the superhero powers of the comic book hero Superman, as "the power to perceive sights and sounds occurring out of his line of vision." *Id.* Evidently, the plaintiff in the instant case has perceived, through "holographic psychic wavelengths," evidence relating to the murder of Ms. Levitz. Complaint ¶ 8. Although, the Complaint is unclear about the exact evidence plaintiff has discovered, it is clear that law enforcement agencies handling the case are uninterested in plaintiff's theories. Finding the state court equally unimpressed by her theories, plaintiff brought the instant federal action.

In the instant case, plaintiff seeks recovery against the state court judges, the conservator, and the conservatorship's attorney's on three counts. First, she alleges that defendants have violated her constitutional rights under 42 U.S.C. § 1983. Second, she alleges that defendants have conspired to deprive her rights in violation of 42 U.S.C. § 1985(3), Third, she alleges that defendants have violated her constitutional rights under 42 U.S.C. § 1986. Plaintiff asserts that the constitutional rights deprived her were Fourteenth Amendment equal protection and procedural due process rights.

II. LEGAL STANDARD

A motion to dismiss should not be granted unless the plaintiff can prove no set of facts in support of its claim entitling it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). When considering a motion to dismiss, the Court must accept all the Plaintiff's allegations as true. *Scheur v. Rhodes*, 416 U.S. 232, 236 (1974). Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a complaint need only be "a short and plain statement of the claim," and, as long as the pleadings "give defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests," notice pleading has been satisfied. *Conley v. Gibson*, 355 U.S. at 47. As the Eleventh Circuit has noted, "the threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is exceedingly low." *Quality Foods v. Latin Am. Agribusiness Devel.*, 711 F.2d 989, 995 (11th Cir. 1983).

Appendix H

III. DISCUSSION

Defendants assert four reasons for the dismissal of plaintiff's Complaint, (1) that it fails to comply with Fed. R. Civ. P. 8, (2) that it fails to state an actionable claim under 42 U.S.C. § 1983, 42 U.S.C. § 1985, and 42 U.S.C. § 1986, (3) that some defendants are entitled to absolute judicial immunity and/or qualified immunity, and (4) that the claims are barred by the *Rooker-Feldman* abstention doctrine. This Court notes the validity of each of these arguments, but will limit its primary discussion to two points, which are: (1) assessing the merits of plaintiff's Constitutional claims and (2) the *Rooker-Feldman* abstention doctrine.

A. General Assessment of Plaintiff's Asserted Rights

Plaintiff insists that her constitutional rights have been violated by the probate court's failure to grant plaintiff the right to testify in open court. Complaint ¶ 26. Plaintiff alleges that this denial violated her Fourteenth Amendment equal protection and procedural due process rights. Under a general heading of "Conspiracy," the Complaint at ¶ 27 states:

> [The defendant judges conspired] intentionally and purposely to deprive and defeat the Plaintiff of her equal protection and constitutional rights to Fourteenth Amendment procedural due process and access to the State Courts as all other citizens of the United States because of invidious animus and discriminating conduct toward her

> legal counsel and the Plaintiff as a psychic thus depriving the Plaintiff of her Fourteenth Amendment equal protection rights.

Plaintiff alleges that the non-judge defendants aided and abetted this denial of constitutional rights by "incredibly" filing motions to dismiss plaintiff's petition and for attorney's fees. Complaint ¶¶ 17, 25.

1. Equal Protection

Plaintiff alleges that the state court effectively denied her access to state court because it did not like her attorney and because she was a psychic. The Equal Protection Clause prevents governments from making improper classifications, and aims to guarantee that people who are similarly situated will be treated similarly.[1] *See Parham v. Hughes*, 441 U.S. 347, 99 S.Ct. 1742 (1979) (function of this clause is to measure the validity of classifications created by law). To state a claim for equal protection, a plaintiff must allege that she was treated differently than similarly situated persons, and that the defendant unequally applied a facially neutral statute for the purpose of discriminating against the plaintiff. *Strickland v. Alderman*, 74 F.3d 260, 264 (11th Cir. 1996). Plaintiff's claim fails on both points. First, plaintiff attempts to invoke equal protection doctrine on the basis of her status as a psychic.

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1. The Fourteenth Amendment Equal Protection Clause provides:

> No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Complaint ¶ 27. Plaintiff will be hard pressed to find any supporting law for the proposition that psychics comprise a class against which invidious discriminatory animus can be focused. This Court has found no authority for this proposition. Also, plaintiff fails to cite any statute that was unequally applied to her. Apparently, plaintiff believes that by making unsupported claims of judicial prejudice against psychics, the Equal Protection Clause will save her baseless claim. This is not so. Even if there was some kind of discriminating conduct in the probate court's conduct, plaintiff's Complaint makes clear that it resulted from personal animosity between the court and the plaintiff or her counsel, and not the result of any class-based animus. Complaint ¶ 19.

2. Procedural Due Process

Plaintiffs second argument for recovery under the civil rights statutes is that her Fourteenth Amendment procedural due process rights were trampled.[2] Minimal procedural due process requires a hearing to be given to parties whose life, liberty, or property rights are to be affected. *Fuentes v. Shevin*, 407 U.S. 67, 79, 92 S.Ct. 1983, 1994 (1972). Plaintiff's Complaint acknowledges that she filed a petition in the probate court which was responded to by the existing conservatorship and then reviewed by the probate court. Then, the probate court determined the petition to have no merit and dismissed it. So plaintiff's allegations are not

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2. The Fourteenth Amendment Due Process Clause provides:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; . . .

predicated on the court's actual deprivation of a hearing, but rather on the court's alleged bias against her in the proceeding.

Plaintiff's procedural due process claim has one glaring problem. Plaintiff does not allege and the court can not determine the sort of life, liberty, or property interest that was denied her. Plaintiff does not have a property interest in the Levitz estate, and admits as much. Complaint ¶ 14. She has attempted to exert influence over the existing conservatorship as an outsider. Also, plaintiff has no identifiable life or liberty interest at stake in attempting to alter the nature of the conservatorship. Even if the probate court unfairly discriminated against plaintiff by dismissing the petition, no procedural due process right was denied the plaintiff, because she had no life, liberty, or property interest at stake. Accordingly, plaintiff has no valid procedural due process claim.

B. The *Rooker-Feldman* Abstention Doctrine

Despite the Complaint's obvious substantive deficiencies, this Court finds that it does not have authority to rule on them. This is because the *Rooker-Feldman* doctrine, based on statutory jurisdictional limitations, teaches that federal district courts have no authority to review final judgments of state courts.[3] The rule applies 'not only to claims actually raised in the state court, but

3. The doctrine finds its roots in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1923) and *Rooker v. Fidelity Trust Co*, 263 U.S. 413 (1923).

also to claims that were not raised in the state court but are 'inextricably intertwined' with the state court's judgment.' " *Biddulph v. Mortham*, 89 F.3d 1491, 1495 n. 1 (11th Cir. 1996), *citing Powell v. Powell*, 80 F.3d 464, 466 (11th Cir. 1996); *see also Liedel v. Juvenile Court*, 891 F.2d 1542, 1545 (11th Cir. 1990). "A federal suit is so intertwined with the earlier state court judgment 'if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.' " *Datz v. Kilgore*, 51 F.3d 252, 253-54 (11th Cir. 1995). The doctrine applies not only to constitutional claims previously litigated in the State courts, but also to non-constitutional federal claims. *Blue Cross and Blue Shield of Maryland, Inc. v. Weiner*, 868 F.2d 1550, 1554-55 (11th Cir.), *cert. denied*, 493 U.S. 892 (1989).

The doctrine does not apply to every case in which a federal district court is called upon to review a matter that has already been at issue in a state Court. The Eleventh Circuit "recognizes an exception to the *Rooker-Feldman* doctrine . . . when the plaintiff has no 'reasonable opportunity to raise his federal claim in state proceedings.' " *Biddulph*, 89 F.3d at 1495 n. 1, *citing Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied* 467 U.S. 1210 (1984). In such situations the federal claim is not considered "inextricably intertwined" with the State court's judgment. *Powell*, 80 F.3d at 467.

A further restriction on the application of the *Rooker-Feldman* doctrine raises concerns in this case. The doctrine does not apply when all of the parties to the federal proceedings were not parties to the state court proceedings. *Roe v. State of Alabama*, 43 F.3d 574, 580 (11th Cir. 1995);

Johnson v. De Grandy, __ U.S. __, 114 S. Ct. 2647, 2654 (1994). Although plaintiff does not cite *Roe* or *Johnson*, or otherwise address *Rooker-Feldman* issues, it is incumbent on the Court to address this issue.

This Court must decide whether the *Roe/Johnson* principle precludes application of the *Rooker-Feldman* doctrine. In order to determine the relationship of the present defendants to the state court litigation, the Court must briefly review the Complaint. The gravamen of the present Complaint appears to be that the probate court deprived plaintiff of her constitutional rights by dismissing her petition. As discussed *supra,* this action did not implicate plaintiff's constitutional rights. In the state court action, plaintiff sought influence over the conservatorship of the Levitz estate. The parties in that proceeding were plaintiff and the conservatorship. In the present action, despite the naming of the probate court judges and those associated with the conservatorship, the principal parties remain the plaintiff and the conservatorship.

If the Court must apply the rule of *Roe* and *Johnson* strictly, perhaps this case could not be dismissed on the basis of the *Rooker-Feldman* doctrine. Technically, not all of the parties to these federal proceedings were formally joined as parties to the state proceedings. However, this Court has noted on previous occasions that the mere joinder of the judge from the state proceedings will not defeat the application of *Rooker-Feldman*. *See Robert J. Chrispen v. Carole Y. Taylor, et al.*, Case No. 96-6808-CIV-RYSKAMP (Final Order of Dismissal, Dec. 18, 1996; *Wild Palms v. Palm Beach County*, Case No. 96-8762-CIV-RYSKAMP

(Final Order of Dismissal, Nov. 21, 1996). In *Wild Palms*, the plaintiff, like plaintiff in this case, was represented by Mr. Elliot Shaw. In that case, plaintiff was denied an injunction in state court after being cited by Palm Beach County for violating a county truck-traffic resolution. Wild Palms proceeded to bring an action in this federal court against the county and the state court judge who denied the injunction petition. This Court dismissed the *Wild Palms* federal action citing the *Rooker-Feldman* abstention doctrine, concluding:

> First, Wild Palms not only had the opportunity to raise its constitutional objections in state court, but it did so, and received a fair adjudication on the merits. Second, although Judge Wennett technically was not a *party* to the state court proceedings, plaintiff obviously cannot defeat *Rooker-Feldman* abstention simply by adding as a defendant the judge from the state court proceedings. Third, although Wild Palms complains of its treatment in the state's administrative proceedings, its ultimate complaint goes to the state judicial proceedings. Accordingly, none of these exceptions will defeat application of *Rooker-Feldman*.

Final Order of Dismissal at 4. In the instant case, plaintiff's counsel is attempting the very same tactic that failed in *Wild Palms*. After the state probate court dismissed plaintiff's petition, she filed in this Court, adding the state court judges and the conservatorship's attorneys as defendants, but essentially seeking relitigation of the issues decided in the

state. As concluded in *Wild Palms*, the *Rooker-Feldman* doctrine will not be defeated in the instant case by the adding of miscellaneous defendants.

The Eleventh Circuit has affirmed the exercise of *Rooker-Feldman* abstention under circumstances analogous to the present ones. In *Teller v. Wishner*, Case No. 95-5127 (Unpublished disposition, Sept. 16, 1996), the court affirmed this Court's dismissal of a federal complaint by a plaintiff who had lost out in a variety of state court divorce and child custody proceedings. In *Teller*, plaintiff brought a federal suit naming the state court prosecutor and various police officers and sheriffs who participated in the state court proceedings. Although all of the defendants were not identical to the formally named defendants in the state court, the Eleventh Circuit noted that "appellant's claims arise out of and are inextricably intertwined with the state court proceedings relating to the dissolution of his marriage, the custody of his child and the maintenance of tranquility between the parties." *Id.* at 2. (emphasis added). Accordingly, the court found that the *Rooker-Feldman* doctrine precluded the federal court from entertaining the suit.

In light of *Wild Palms* and *Teller*, the Court believes that the "same party" rule enunciated in *Roe* and *Johnson* does not preclude application of the *Rooker-Feldman* doctrine under circumstances such as these where the principal parties remain the same and the issues involved are inextricably intertwined with the state court proceeding. The "same party" rule is reserved for parties who had nothing to do with the prior litigation, and who, therefore,

had no opportunity to present their federal claims to the state court. *See Johnson*, 114 S. Ct. at 2654 ("The United States merely seeks to litigate its [] case for the first time . . . ."); *Roe*, 43 F.3d at 580 ("[B]ecause the plaintiffs are not parties to the circuit court action, the plaintiffs had no opportunity to raise their constitutional claims in the circuit court and their claims, therefore, were not considered by the circuit court.").

This Court finds that plaintiff has sued the defendants for actions which were inextricably intertwined with the state court judgment. While plaintiff alleges constitutional claims in the present action that were not pursued in the state court, these claims are baseless. The crux of plaintiff's Complaint involves the same outlandish allegations reviewed by the probate court. Plaintiff had adequate opportunity to raise all of her claims in that forum, and plaintiff chose not to take an appeal in the state court system. This Court does not function as a state appellate court and will not sit in review of the state court's action. Accordingly, this case will be dismissed.

IV. CONCLUSION

The Court has considered the Motions and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that Defendants Motions to Dismiss **[DE 11 & 18]** be, and the same are hereby **GRANTED.** The Court will enter final judgment by separate order.

Appendix H

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 8 day of December, 1997.

s/ Kenneth L. Ryskamp
KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE